

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1941**

**No. 280**

**ROSCO JONES, PETITIONER,**

*vs.*

**CITY OF OPELIKA**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE  
OF ALABAMA**

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**PETITION FOR CERTIORARI FILED JULY 16, 1941.**

**CERTIORARI GRANTED OCTOBER 13, 1941.**

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No.

ROSCOE JONES, PETITIONER,

vs.

CITY OF OPELIKA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF ALABAMA

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[fol. 1]

{Caption omitted}

[fol. 2]

**IN SUPREME COURT OF ALABAMA, FIFTH DIVISION**

No. 343

Rosco Jones, Appellant,

vs.

CITY OF OPELIKA, Appellee

Appealed from Lee Circuit Court at Law

PETITION FOR WRIT OF CERTIORARI

(Submitted on Briefs May 1, 1941)

To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of Alabama:

Comes City of Opelika, by and through Duke & Duke, its attorneys, and respectfully petitions this Honorable Court to review, revise, reverse and hold for naught that certain judgment rendered by the Court of Appeals on March 18, 1941, wherein Rosco Jones was Appellant and the City of Opelika was Appellee, which said judgment reversed the judgment of the Circuit Court of Lee County, Alabama, and discharged Appellant from further custody in these proceedings.

Your petitioner avers that an application to said Court of Appeals for rehearing of said cause and brief in support thereof was duly filed by your petitioner on March 31, 1941, and that said application for rehearing was overruled on April 22, 1941.

Your petitioner further shows unto your Honors that the Court of Appeals erred in reversing the judgment of the Circuit Court of Lee County, Alabama, and in discharging the Appellant from further custody in these proceedings, in the following ways, to-wit:

1. The Court of Appeals erred in holding that Section 1 under Conditions and Provisions of the City License Schedule for 1939, as applied to Appellant, is invalid—void, and of no effect.



[fol. 3] 2. The Court of Appeals erred in holding that the entire City License Schedule for 1939, as applied to Appellant, was invalid—void, and of no effect, merely because Section 1 under Conditions and Provisions of the City License Schedule for 1939 was in conflict with the Fourteenth Amendment of the United States.

In view of the above, your petitioner respectfully requests that this petition for writ of certiorari be granted, directing the Court of Appeals to affirm the judgment of the Circuit Court of Lee County, Alabama.

Submitted herewith is a brief in support of this petition.

Respectfully submitted, Duke & Duke, Attorneys for Appellee.

I hereby certify that a copy of the foregoing petition for Writ of Certiorari has been delivered to Hon. Grover C. Powell, Attorney for Appellant, on the 28th day of April, 1941.

Wm. S. Duke, Attorney for Appellee.

[fol. 4] IN SUPREME COURT OF ALABAMA

The Court Met Pursuant to Adjournment.

Present: Chief Justice Gardner and Associate Justices Thomas, Boulidin, Brown, Foster and Livingston.

Knight, J., Not Sitting.

5 Div. 343

Ex Parte CITY OF OPELIKA

PETITION FOR CERTIORARI TO COURT OF APPEALS

In re ROSCO JONES

v.

CITY OF OPELIKA

[Lee Circuit Court]

JUDGMENT—May 22, 1941

Comes the petitioner by attorney, and the Petition for the Writ of Certiorari to the Court of Appeals being sub-

mitted on briefs and duly examined and understood by the Court, it is considered that said Petition be granted. And the record and matters therein assigned for errors in the Court of Appeals being submitted, and duly examined and understood by the Court, it is considered that in the record and proceedings of the Court of Appeals there is manifest error. It is therefore considered that the judgment of the Court of Appeals be reversed and annulled, and the cause remanded to said Court for further proceedings therein. It is also considered that Rosco Jones pay the costs incident to this proceeding.

[fol. 5]

IN SUPREME COURT OF ALABAMA.

[Title omitted]

OPINION—Filed May 22, 1941

THOMAS, Justice:

The certiorari seeks to review the ruling of the Court of Appeals in *Rosco Jones v. City of Opelika*, — So. —, wherein it was held that an ordinance of the City of Opelika was void as applied to the defendant. The motion for rehearing which was denied by the Court of Appeals is, in part, as follows:

“The Court of Appeals erred in holding that Section 1 under Conditions and Provisions of the City License Schedule for 1939, as applied to Appellant, is invalid—void, and of no effect.

“The Court of Appeals erred in holding that the entire City License Schedule for 1939, as applied to Appellant, was invalid—void, and of no effect, merely because Section 1 under Conditions and Provisions of the City License Schedule for 1939 was in conflict with the Fourteenth Amendment of the United States.”

[fol. 6] The opinion now sought to be reviewed, among other things, found:

“Appellant, when arrested, was going about the streets of the City of Opelika, holding two little pamphlets in his hand, and saying to the public: ‘Get your two copies for five cents.’

"Copies of the two pamphlets mentioned are before us, and we find in them nothing obscene or immoral; or which advocates unlawful conduct; or which is calculated to 'disturb public order.'"

"Appellant is an ordained minister of the gospel of Jehovah's Kingdom and (as he contends, without dispute in the testimony) one of Jehovah's witnesses, consecrated to bear witness concerning the Kingdom of Jehovah God. The sole mission of the pamphlets is to set forth the gospel of the Kingdom of God as he believes and preaches it. "He did not, he says, apply for or obtain a license (to 'peddle' his pamphlets) because he regarded himself as sent by Jehovah God to do his work and believes that such application would have been an act of disobedience to Jehovah's Commandments which would result in his eternal destruction.

"Appellant was tried in the Recorder's Court of the City of Opelika, and convicted, on the charge of selling or offering to sell books without a license being first obtained from the Clerk of said city as required by the city ordinance."

The judgment of the Court of Appeals is based on the case of *Lovell v. City of Griffin*, 303 U. S. 444, 58 S. Ct. 666, 82 L. ed. 949, where Mr. Chief Justice Hughes said:

"The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is an essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.' *Ex parte Jackson*, 96 U. S. 727, 733. The license tax in *Grosjean v. American Press Co.*, 297 U. S. 233, 245, 246, was held invalid because of its direct tendency to restrict circulation.

"As the ordinance is void on its face, it was not necessary for appellant to seek a permit under it. \* \* \*

In *Schneider v. State (Town of Irvington)*, 308 U. S. 147, 84 L. ed. 155, the above case was explained by Mr. Justice Roberts, as follows:

"As said in *Lovell v. Griffin*, 303 U. S. 444, 82 L. ed. 949, 58 S. Ct. 666, *supra*, pamphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people.

On this method of communication the ordinance imposes [fol. 7] censorship, abuse of which engendered the struggle in England which eventuated in the establishment of the doctrine of the freedom of the press embodied in our Constitution. To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.

“We are not to be taken as holding that commercial soliciting and canvassing may not be subject to such regulation as the ordinance requires. Nor do we hold that the town may not fix reasonable hours when canvassing may be done by persons having such objects as the petitioner. Doubtless there are other features of such activities which may be regulated in the public interest without prior licensing or other invasion of constitutional liberty. \* \* \*

In *Cox v. State of New Hampshire*, Sup. Ct. Law. ed. Advance Opinions, Vol. 85, No. 11, p. 702, Mr. Chief Justice Hughes said, of an ordinance imposing a tax on parades, as follows:

“As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places. *Lovell v. Griffin*, 303 U. S. 444, 451, 82 L. ed. 949, 953, 58 S. Ct. 666; *Hague v. Committee for Industrial Organization*, 307 U. S. 496, 515, 516, 83 L. ed. 1423, 1436, 1437, 59 S. Ct. 954; *Schneider v. Irvington*, 308 U. S. 147, 160, 84 L. ed. 155, 164, 60 S. Ct. 146; *Cantwell v. Connecticut*, 310 U. S. 296, 306, 307, 84 L. ed. 1213, 1219, 1220, 60 S. Ct. 900, 128 A. L. R. 1352.

“It was with this view of the limited objective of the statute that the state court considered and defined the duty of the licensing authority and the rights of the appellants to a license for their parade, with regard only to considera-

tions of time, place and manner so as to conserve the public convenience. \* \* \*

"The decisions upon which appellants rely are not applicable. In *Lovell v. Griffin*, 303 U. S. 444, 82 L. ed. 949, 58 S. Ct. 666, *supra*, the ordinance prohibited the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the city manager, thus striking at the very foundation of the freedom of the press by subjecting it to license and censorship. \* \* \*

"In *Schneider v. Irvington*, *supra* (308 U. S. p. 163, 84 L. ed. 165, 60 S. Ct. 146) the ordinance was directed at canvassing and banned unlicensed communication of any views, or the advocacy of any cause, from door to door, subject only to the power of a police officer to determine as a censor what literature might be distributed and who might distribute it. In *Cantwell v. Connecticut*, *supra* (310 U. S. p. 305, 84 L. ed. 1218, 60 S. Ct. 900, 128 A. L. R. 1352) the statute dealt with the solicitation of funds for religious [fol. 8] causes and authorized an official to determine whether the cause was a religious one and to refuse a permit if he determined it was not, thus establishing a censorship of religion. \* \* \* The statute, as the state court said, is not aimed at any restraint of freedom of speech, and there is no basis for an assumption that it would be applied so as to prevent peaceful picketing as described in the cases cited."

When these cases are considered, it is apparent that the *Lovell* case, *supra*, is based on ordinances that prohibited or censored the distribution of literature. It was decided on March 28, 1939. Thereafter, the case of *Schneider v. Town of Irvington*, *supra*, was decided, and it held that commercial distribution was subject to due regulation, as distinguished from the free distribution of literature, as we have indicated above.

In the instant case the defendant carried a bundle of booklets entitled "Face the Facts and learn the only way of escape," and "Fascism or Freedom." He cried "Two copies for five cents." The appellant in the *Cox* case, *supra*, and in the instant case did not apply for the permit or license required by the respective ordinances. The decision by Mr. Chief Justice Hughes was to the effect that the City of Manchester (*Cox v. State of New Hampshire*, *supra*, 85 S. Ct. 702), had the right and authority to con-



trol its streets and that the same power extended to regulation thereof by licenses. Such is the case now for decision.

It results, therefore, that the Lovell case, *supra*, is not decisive of the case at bar. The ordinances dealt with were "ordinances on prohibition or censorship" and those dealt with in the Cox case, *supra*, and in the case at bar, are licenses imposed for police protection and public order. It was held that a privilege license may be imposed without a conflict with the Constitution of the United States or any amendment thereof.

Since the decisions above referred to, the District Court of the United States has handed down a decision in *Leiby et al, v. City of Manchester*, 33 Fed. Sup. 842, where an ordinance penalizing any person "who shall sell pamphlets or magazines without first procuring a badge from the superintendent of schools was invalid on its face as applied to members of a religious cult selling literature devoted to [fol. 9] spreading of their religious beliefs, and city and its officials would be enjoined from enforcing ordinance. U. S. C. A. Const. Amends. 1, 14."

This decision was considered in *City of Manchester v. Leiby*, 117 Fed. Reporter, (2d) 661, and the court again reviewed the case of *Lovell v. City of Griffin*, *supra*, (303 U. S. 444, 58 S. Ct. 666, 82 L. ed. 949), saying:

"In our opinion the ordinance cannot be held void on its face under *Lovell v. City of Griffin*, 303 U. S. 444, 58 S. Ct. 666, 82 L. ed. 949 nor under any other controlling authority. The whole point of the *Lovell* case was that the practice of distributing literature of any kind, whether by sale or gratuitously, and not merely in the streets but anywhere within the city limits, was absolutely prohibited without the written permission of the city manager having first been obtained. This official, in exercising his discretion to give or withhold permission, was not even bound by any defined standards. The Supreme Court characterized the ordinance as restoring 'the system of license and censorship in its baldest form' (page 452 of 303 U. S., page 669 of 58 S. Ct., 82 L. Ed. 949), and held that it infringed the freedom of the press protected by the Fourteenth Amendment."

The opinion concluded with the statement:

"The permit required by the Manchester ordinance is of a similar sort. As the court said in the *Cantwell* case,



supra, 310 U. S., at page 306, 60 S. Ct. at page 904, 84 L. Ed. 1213, 128 A. L. R. 1352, 'Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from injury. Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.'

"The decree of the District Court is reversed, with costs to the appellants, and the case is remanded to that court with directions to dismiss the complaint."

And this decision of the Circuit Court of Appeals was presented to the Supreme Court of the United States, and in 61 S. Ct. Rep. (No. 13) p. 838, the writ of certiorari was denied on April 7, 1941.

To a full understanding of these cases it is necessary to note what was also said by the circuit judge in the case in which the writ was denied. The observations contained in the opinion of Judge MaGruder were, in part, as follows: [fol. 10] " \* \* \* the Manchester ordinance, now before us contains no element of prior censorship upon the distribution of literature. It requires only a simple routine act of obtaining a badge of identification before a person can sell on the streets. This reasonable police regulation, in our opinion, imposes no substantial burden upon the freedom of the press or the free exercise of religion.

"Under the National Prohibition Act, 27 U. S. C. A., § 1 et seq., the use of sacramental wine was subject to regulation and permit. See *Shapiro v. Lyle*, D. C., 30 F. 2d, 971. The regulations were no doubt applicable even to persons who might have believed it a gross impiety to apply for a civil permit before partaking of a divine sacrament. Similarly, as to the sacrament of marriage—one must get a marriage license from civil authority, in some states a brief waiting period is mandatory after the license is issued. These may be regarded as instances of rendering unto Caesar the things which are Caesar's; \* \* \*"

The foregoing late decisions of the Supreme Court of the United States indicate the right of the municipality to duly

impose a license tax upon sales of tracts or booklets when one goes about the streets of a city so selling or offering to sell the same,

See also *Cantwell et al., v. State of Connecticut*, 60 Sup. Ct. Rep. 900, 310 U. S. 296; *Hague, Mayor, et al., v. Committee For Industrial Organization, et al.*, 59 Sup. Ct. Rep. 954, 307 U. S. 496.

The license schedule which was originally enacted is Schedule 146 of the 1935 Revenue Act (General Acts of Alabama, 1935, p. 499), which was amended by an act approved March 2, 1937, (Acts of Alabama, Extra Session 1936-37, p. 277), levies a license on itinerant vendors or peddlers of merchandise. There appears to be no exemption in this section for preachers or others selling books, magazines, tracts or periodicals. The 1935 Act, *supra*, Section 368-1/2, p. 564, specifically provided that the exemptions appearing in that revenue act were exclusive and all other exemptions were specifically repealed thereby.

The Code of 1940, Title 51, § 611, grants no exemptions under this schedule. There are no provisions of the revenue statutes for the state, counties or municipalities exempting ministers of the gospel from the respective license taxes exacted of all so engaged in selling, etc.

The subject of a proper nondiscriminatory license by a [fol. 11] municipality has been recently considered by this court in *Ex parte Stein*, 199 So. 13, wherein many authorities are collected. The application to the Supreme Court of the United States to review the decision in said case was denied.—61 S. Ct. Rep. (Thomas F. Stein, Jr., doing business under the name and style of Stein Brokerage Co., petitioner, *v. State of Alabama*; Facts and opinion, 29 Ala. App. 565, 199 So. 11; Ala. Sup. 199 So. 13), p. 838.

It results from the foregoing that the opinion of the Court of Appeals is founded on error and the petition for writ of certiorari is hereby granted.

Writ granted.

Gardner, C. J., Bouldin, Brown, Foster and Livingston, JJ., Concur.

Knight, J., not sitting.

[fol. 12] IN SUPREME COURT OF ALABAMA

[Title omitted]

## MOTION FOR STAY AND NOTICE OF APPEAL

To the Hon. Chief Justice and Associate Justices of the Supreme Court of Alabama:

1. Comes Rosco Jones, Appellant, by and through Grover C. Powell, his attorney, leave of the Court having first been obtained, and respectfully petitions this Honorable Court as follows:

2. That on the 22nd day of May, 1941, an opinion was filed by this court in the above named and styled case, granting the petition of appellee for a writ of certiorari and reversing the judgment of the Court of Appeals in said case, and which opinion and judgment decided the case adversely to appellant.

[fol. 13] 3. That appellant, Rosco Jones, being dissatisfied with said judgment, desires and intends to file an appeal in said matter to the Supreme Court of the United States for a review of the judgment.

4. For the purpose of perfecting the necessary appeal, it is requested that a stay of ninety (90) days be granted by the court and that during that time a remittitur shall not be issued.

Wherefore, appellant prays that a stay of ninety (90) days be granted as requested herein for the purpose of allowing time to perfect the necessary appeal in said case to the Supreme Court of the United States and that during that time the judgment of this court be stayed and a remittitur shall not issue.

(Signed) Grover C. Powell, Attorney for Appellant.

Petition granted. This the 31st day of May, 1941.

(Signed) Lucien D. Gardner, Chief Justice

I hereby certify that a copy of the foregoing notice and motion for stay has been delivered to Hon. William Duke, Attorney for Appellee, on the 29th day of May, 1941, by sending the same registered mail.

(Signed) Grover C. Powell, Attorney for Appellant.

[fol. 14]

## IN SUPREME COURT OF ALABAMA

[Title omitted]

## ORDER GRANTING STAY OF EXECUTION—May 31, 1941

It Is Ordered that the petition for stay of execution for 90 days for the purpose, of allowing time to perfect an appeal or apply for a Writ of Certiorari to the Supreme Court of the United States in the above styled cause, be and the same is hereby granted.

[fols. 15-16]

[Captions omitted]

[fol. 17]

## IN CIRCUIT COURT OF LEE COUNTY

CERTIFICATE ON APPEAL FROM RECORDER'S COURT—Filed  
April 14, 1939

To the Honorable W. O. Brownfield, Clerk of the Circuit Court of Lee County, Alabama:

I hereby certify to you that on the 3rd day of April, 1939, Rosco Jones, was found guilty of violation of the City License Ordinance and was fined fifty and no/100 (\$50.00) dollars and costs and in default thereof was sentenced ninety (90) days labor for the City, by the Recorder of the Recorder's Court of the City of Opelika, Alabama; and that the said Defendant, Rosco Jones, has appealed from said judgment to the Circuit Court of Lee County, Alabama, and has filed an Appeal Bond in the amount of one hundred twenty-five and no/100 (\$125.00) dollars which said Bond has been taken and approved and is herewith handed to you.

This the 14th day of April, 1939.

(Signed) T. C. Tollison, City Clerk. (Seal.)

Bond on appeal for \$125.00 filed April 8, 1939, omitted in printing.

[fol. 18]

## IN CIRCUIT COURT OF LEE COUNTY

MOTION TO TRANSFER CAUSE FROM JURY TO NON-JURY DOCKET  
—Filed May 10, 1939

Now Comes the City of Opelika, Alabama, and moves the court to transfer this cause from the jury docket to the non-

jury docket, and moves the court that this cause be tried without the intervention of a jury.

(Signed) Duke & Duke, Solicitors for the City of Opelika, Alabama.

[fol. 19] IN CIRCUIT COURT OF LEE COUNTY

ORDER TRANSFERRING CASE TO NON JURY DOCKET—Filed May 25, 1939

On Appeal from Recorder's Court of City of Opelika

Comes the City of Opelika and moves the Court to transfer the above styled case from the Jury Docket to the Non-Jury Docket of this court.

Which said motion being heard, understood and considered, it is ordered that said cause be transferred from said jury docket to the non-jury docket, as prayed for in said motion.

This 25th day of May, 1939.

(Signed) W. B. Bowling, Judge.

IN CIRCUIT COURT OF LEE COUNTY

COMPLAINT—Filed November 2, 1939

1. The City of Opelika, Alabama, by its solicitors, complains of Roseo Jones, the defendant, that within 12 months before the commencement of the prosecution, he did sell books in the City of Opelika, Alabama, without first procuring a license to sell such books from the City of Opelika, Alabama, contrary to the license ordinance of the City of Opelika, Alabama.

2. The City of Opelika, Alabama, by its solicitors, complains of Rosco Jones, the defendant, that within 12 months before the commencement of the prosecution, he did operate as a Book Agent in the City of Opelika, Alabama, without first procuring a license to operate as a Book Agent from the City of Opelika, Alabama, contrary to the license ordinance of the City of Opelika, Alabama.



3. The City of Opelika, Alabama, by its solicitors, complains of Rosco Jones, the defendant, that within 12 months before the commencement of the prosecution, he did operate as a transient agent of books in the City of Opelika, Alabama, without first procuring a license to operate as a transient agent of books from the City of Opelika, Alabama, contrary to the license ordinance of the City of Opelika, Alabama.

4. The City of Opelika, Alabama, by its solicitors, complains of Rosco Jones, the defendant, that within 12 months before the commencement of the prosecution, he did operate as a transient dealer of books in the City of Opelika, Alabama, without first procuring a license to operate as a transient dealer of books from the City of Opelika, Alabama, contrary to the license ordinance of the City of Opelika, Alabama.

[fol. 20] 5. The City of Opelika, Alabama, by its solicitors, complains of Rosco Jones, the defendant, that within 12 months before the commencement of the prosecution, he did operate as a transient distributor of books in the City of Opelika, Alabama, without first procuring a license to operate as a transient distributor of books from the City of Opelika, Alabama, contrary to the license ordinance of the City of Opelika, Alabama.

(Signed) Duke & Duke, Solicitors for the City of Opelika, Alabama.

#### IN CIRCUIT COURT OF LEE COUNTY

DEMURRER—Filed November 2, 1939

Comes now the defendant in the above stated case, before arraignment and pleading in said case leave of the court being first had, and files this demurrer to the charge against him and says that said charge should be dismissed for the following reasons, to wit:

1. Because the charge against him sets out no offense against the City of Opelika.

2. Because paragraph eight of the ordinance is unconstitutional and void in that it is violative of the "Due



process" clause of the 14th Amendment of the United States Constitution in that it vests arbitrary powers in the members of the City Commission of the City of Opelika, vesting members of said commission with the power to grant or withhold from granting license to operate a news stand with no rule or guide to govern them in granting or withholding said license.

3. Because said paragraph eight is unconstitutional and void for the further reason that in vesting arbitrary powers in the City Commission above referred to, without a rule or guide, it violates the "Due process" clause of the Federal Constitution in that it abridges the freedom of the press.

4. The charge against the defendant should be quashed as violative of the "Due process" clause above referred to because the defendant was arrested without a warrant.

5. The license ordinance for 1939 above referred to is unconstitutional and void as violative of the "Due process" clause above referred to because it undertakes to vest arbitrary power in City Commission as shown by the following portion of the ordinance, to-wit: "All license . . . shall be subject to revocation in the discretion of the City [fol. 21] Commission, with or without notice to the Licensee," thus the commission may arbitrarily revoke any and all license for news or any other stands, with no rule or guide that would apply to all alike and with no provision of being heard and defend themselves against such revocation and with no provision of an adequate remedy to recover license paid and revoked immediately or later.

6. Said license ordinance is void and violative of said "Due Process" clause for the further reason that it undertakes to license the printed page and thus prohibit its free circulation.

(Signed) Grover C. Powell, W. A. Mason, Attorneys  
for the Defendant.

IN CIRCUIT COURT OF LEE COUNTY

MOTION TO DISMISS—Filed November 2, 1939.

Comes now the defendant in the above stated case, with leave of the Court, and says that the complaint should be dismissed for the following reasons, to wit: .

1. The complaint is invalid in that it is insufficient in law and does not state facts constituting any offense under the law.

2. The ordinance here in question is invalid on its face and as applied to the acts of the defendant is unconstitutional, illegal and void by reason of the fact that it — in conflict with the "Due Process" clause of the State of Alabama and the 14th Amendment of the Constitution of the United States and denies to the defendant "Due Process of Law" in the following particulars, to wit:

(a) It denies and unduly restricts freedom of Speech and freedom of the press.

(b) It denies and unduly restricts freedom of worship, freedom of conscience and freedom of religion.

(c) It is too vague and indefinite to provide a sufficiently ascertainable standard of guilt.

(d) It grants arbitrary powers to the body of men designated the "City Commission" with no rule or standard to guide them to make it applicable to all alike and is oppressive.

(e) It undertakes to license the printed page.

[fol. 22] (f) It is applied with an unequal hand in an arbitrary manner.

(g) Because the defendant was arrested without a warrant.

(Signed) Grover C. Powell, Attorney for the Defendant.

Filed in open Court after Plaintiff has closed its case.  
This Nov. 2, 1939.

# IN CIRCUIT COURT OF LEE COUNTY

MOTION TO DISMISS—Filed November 2, 1939

The Defendant moves to dismiss this case and for his discharge upon the following grounds:

That the complaint is invalid and does not state facts sufficient to constitute an offense under the law;

That the ordinance in question is invalid and void by reason that it is in direct conflict with the Constitution of this State and of the United States, in this: that it restricts the freedom of speech, freedom of press, and freedom of worship of Almighty God;

That the ordinance in question is in direct violation of the Fourteenth Amendment of the Constitution of the United States.

That the evidence by prosecution shows defendant is not guilty.

The Defendant therefore prays this court to dismiss this case and that he be discharged.

(Signed) Grover C. Powell, Attorney for Defendant.

Filed in open Court at the conclusion of the offering of all the evidence. This Nov. 2, 1939.

[fol. 23] IN CIRCUIT COURT OF LEE COUNTY

JUDGMENT OF CONVICTION ON APPEAL—November 2, 1939

On this the 2nd day of November, 1939, came the parties, the plaintiff, corporation by its attorneys, and the defendant in person and by attorney, and the defendant having filed demurrer to the complaint in this cause, and the same being now heard and considered, it is ordered and adjudged by the court that said demurrer to said complaint be and it is hereby overruled; to which ruling of the court the defendant then and there duly excepted.

Issue being then joined between the parties, and this cause having by a previous order of court, been transferred to the non-jury docket of this court, the cause is heard by the court without a jury; and after the plaintiff, City of Opelika, a municipal corporation had offered its testimony, the defendant moves the court to dismiss the complaint on the grounds as stated in writing filed in the cause; and the same being heard and considered, by the court, it is ordered and adjudged by the court that said motion to dismiss be and is hereby overruled. Then after the conclusion of the offering of all the testimony, the defendant moves the court that the complaint be dismissed and defendant discharged on the grounds as stated in the paper writing on file in this cause; and the same being duly heard

and considered, it is ordered and adjudged by the court that the said motion be and is hereby overruled.

After hearing the evidence and the argument of counsel on both sides, the court finds the defendant guilty and assesses a fine of \$50.00. It is therefore considered, ordered and adjudged by the court that the plaintiff, City of Opelika a municipal corporation, have and recover of the defendant, Rosco Jones, the said sum of fifty (\$50.00) dollars, the amount of fine assessed and also the sum of one hundred, three and 05/100 (\$103.05) the amount of costs in this case for which execution may issue and as against this judgment there are no exceptions of personal property allowed the said defendant; and it is further ordered and adjudged by the court that the plaintiff, City of Opelika a municipal corporation, have and recover of John L. Griffin, Joe H. Griffin, and United States Fidelity & Guaranty Company, sureties on the defendant's appeal bond in the sum of one hundred and twenty five (\$125.00) dollars, the amount of their appeal bond in this cause, for the recovery of which let execution issue, and as against this judgment and said execution to be issued thereon, there are no exemptions of personal property allowed the said sureties, or either of them; the total amount of judgment [fol. 24] and costs being \$153.05, which is more than the amount of the appeal bond in this cause.

And now comes the defendant by his attorney and gives notice to the court that he will take an appeal and does take an appeal from the judgment of this court to the Supreme Court of Alabama. The same being considered, it is ordered by the court that the amount of bail in this cause be and is hereby fixed at two hundred (\$200.00) dollars.

(Signed) W. B. Bowling, Judge.

[fol. 25] Supersedeas Bond on appeal for \$200.00 filed Nov. 3, 1939, omitted in printing.

[fol. 26] IN CIRCUIT COURT OF LEE COUNTY

MOTION FOR NEW TRIAL—Filed December 1, 1939

Comes now the defendant and makes this his motion to set aside the judgment and for a new trial, on the judgment of conviction entered against him November 2nd, 1939,

at the Fall Term of the Circuit Court; without the intervention of a jury on the charge of violating an alleged ordinance of the City of Opelika, on the following grounds, to-wit:

1. Because the verdict is contrary to the evidence and without evidence to support it.
2. Because the verdict is decidedly and strongly against the weight of evidence.
3. Because the verdict is contrary to law and the principles of justice and equity.
4. Because the Court erred in overruling and denying defendant's demand for a jury, contrary to the Constitution of State of Alabama, Article One, Section Six, and the "Due Process" Clause of the Fourteenth Amendment of the Constitution of the United States.
5. Because the defendant was prevented from making his defense by surprise without any fault on his part. Though he demanded a copy of charges, the complaint was not given to him or his counsel until the case was called for trial contrary to the Constitution of Alabama, Article One, Section Six, and the said "Due Process" clause of the Constitution of the United States, because said charges, when examined, proved to be in the nature of an amendment, and are substantially different, charging a different offense from the charge upon which he was tried in the recorder's court.
6. Because the Venue was not proven.
7. Because the Court erred in overruling defendant's demurrer when said demurrer should have been sustained upon each and every ground thereof.
8. Because the court erred in overruling defendant's motion to dismiss made at the conclusion of the evidence for the prosecution, said motion should have been sustained upon each and every ground thereof.
9. Because the court erred in overruling defendant's motion to dismiss made at the conclusion of all of the evidence.
10. The court erred in not dismissing the charges against the defendant, the same being insufficient in law because



[fol. 27] they set out no offense against the City of Opelika, the same undertakes to, and does charge another offense from the original charge in the recorder's court as shown by the return of the recorder.

11. Because the court erred in permitting evidence to be introduced, over the timely objection of defendant, which was illegally secured, contrary to the Constitution of the State of Alabama which provides: "The people shall be secure in their persons, houses, papers, and possessions from unreasonable seizure or search", and the "due process" clause of the said Federal Constitution.

12. Because the defendant was denied a fair trial because the court ruled out all of the evidence showing that the activity at the time of the arrest, was in pursuant to and was his regular work as a minister of the Gospel, and a part of his worship and in the enjoyment of freedom of "religion", and for the purpose of promulgating his Christian belief.

13. Because the court erred in ruling out the expert testimony of Norman McCloud and Stewart M. Baker, Methodist ministers, showing that the work defendant was engaged in was the proper work of a minister of the Gospel and that alleged ordinance was applied in an arbitrary and distretionary manner, regarding the distribution of such printed matter.

14. The court erred in excluding the expert testimony of A. C. Windham, W. H. Perry, M. C. Schrader, C. M. Metzger, W. Walton, J. B. Seals, W. A. Hamilton and Jno. E. Griffin, all of whom it was agreed, in open court by counsel for prosecution, that their testimony would be the same as that given by Norman McCloud and Stewart M. Baker.

Wherefore defendant prays that the judgment be set aside and that this, his grounds for a new trial, be enquired of by the Court and that a new trial be granted him.

(Signed) Grover C. Powell, W. A. Mason, Attorneys  
for Defendant.

[fol. 28] GEORGIA,

Fulton County:

Personally appeared before me an officer duly authorized to administer oaths, Grover C. Powell, attorney for defend-



ant, who on oath says that the defendant was prevented from making his defense by surprise, as related in the within and foregoing motion, and that the same is true.

(Signed) Grover C. Powell.

Sworn to and subscribed before me this November 28, 1939. (Signed) John W. Bolton, Notary Public, Georgia, State at Large. (Seal.)

IN CIRCUIT COURT OF LEE COUNTY

ORDER CONTINUING MOTION FOR NEW TRIAL—Filed December 1, 1939

It is ordered that this motion be continued for 30 days.  
(Signed) W. B. Bowling, Judge.

[fol. 29] IN CIRCUIT COURT OF LEE COUNTY

ORDER OVERRULING MOTION FOR NEW TRIAL—Filed December 19, 1939

Motion to set aside verdict and grant defendant a new trial.

Upon consideration of said motion, it is Ordered that the same be and is hereby overruled.

At LaFayette, Alabama, this December 19, 1939.

(Signed) W. B. Bowling, Judge.

IN CIRCUIT COURT OF LEE COUNTY

**Bill of Exceptions**

Be It Remembered That in the Circuit Court of Lee County, Alabama, at the November Term, 1939, of said Court, the Honorable W. B. Bowling, upon the trial of the cause of City of Opelika vs. Rosco Jones, the following proceedings not otherwise appearing of record, were had and done commencing on the 2nd day of November, 1939.

Issue was joined between the parties as shown by the record.

Whereupon, T. C. Tollison, a witness sworn in behalf of the City of Opelika, testified substantially as follows:

My name is T. C. Tollison; I am City Clerk of the City of Opelika, and as such am custodian of the City's minutes and ordinance books. The book now presented to me is the City ordinance book or minute book. In this book on the page headed "City License Schedule for 1939" and the [fol. 30] subsequent pages is an ordinance and that ordinance was adopted by the Board of Commissioners of the City of Opelika for the year 1939, and was in effect from January 1st, 1939, up to the present time; that is the original ordinance in that minute book. This license schedule which has the certificate affixed of myself as the City Clerk is a correct and exact copy of that said license schedule.

The plaintiff, City of Opelika, thereupon introduced in evidence the original ordinance identified by the witness, requesting and securing permission of the Court to withdraw the minute book and substitute in lieu thereof the City License Schedule identified by the witness, the same being in words and figures as follows, to-wit:

(Here the Clerk will set out the Exhibit referred to.)

#### EXHIBIT

##### City License Schedule for 1939

An ordinance to fix and prescribe the rates for license or privilege taxes for trades, vocations, professions, and other businesses conducted within the City of Opelika, Alabama, and its police jurisdiction for the year 1939, and to prescribe certain conditions and provisions for the conduct thereof and to further fix and prescribe certain penalties for the violation of said ordinance.

Be it ordained by the Board of Commissioners of the City of Opelika, Alabama, that the following schedule of rates for license or privilege taxes for the conduct of any trade, vocation, profession or other business conducted within the City of Opelika and its police jurisdiction for the year beginning January 1, 1939, and ending December 31, 1939 and the following conditions and provisions for the conduct thereof, and the following penalties for the violation thereof be and it is hereby adopted, to-wit:

## Conditions and Provisions

### 1. Right of City to Revoke.

All licenses, permits or other grants to carry on any business, trade, vocation, or professions for which a charge is made by the City shall be subject to revocation in the discretion of the City Commission, with or without notice to the licensee.

### 2. License for Portion of Year.

In case such license be taken out after July 1, only one- [fol. 31] half of such license shall be charged and collected, unless otherwise provided therein.

### 3. Transfer of License.

No license, permit, or other grant to carry on any business, trade, vocation, or profession issued under this ordinance, shall be transferred from one person to another, nor transferred from one location to another.

### 4. Penalties.

It shall be unlawful for any person, firm, or corporation or agent of such person, firm or corporation, to engage in any of the businesses or vocations for which a license may be required without first having procured a license therefor, and any violation hereof shall constitute a criminal offense, and shall be punishable by fine not to exceed one hundred (\$100.00) Dollars for each offense and by imprisonment not to exceed thirty days, either or both at the discretion of the Court trying the same, and each day when such business or vocation is conducted without such license shall constitute a separate offense.

### 5. Lien for License.

On all property, both real and personal, used in any exhibition, vocation, profession or business, for which a license is or may be required, the City of Opelika shall have a lien for such license, which lien shall attach as of the date the license is due, on all property of or used in such exhibition, vocation, business, or profession, which lien shall be superior to all other liens except the lien of the State, County, and City for taxes, and of the State and County for licenses,

and which lien may be enforced as other liens are enforced by attachment or equity.

#### 6. License for Police Jurisdiction.

All vocations or businesses or exhibitions located or operated without the City Limits but within the police jurisdiction and delivering goods within the City shall pay the same license for such vocation, exhibitions or profession as is imposed upon similar vocations, businesses or exhibitions, within the City Limits.

#### 7. Police Jurisdiction.

All vocations, exhibitions, professions, or businesses except those described in Section 6 hereof, located outside the City Limits but within the police jurisdiction, shall pay one-half the amount of the license imposed upon similar vocations, exhibitions, professions or businesses within the City Limits proper.

#### 8. Sidewalk or Street Stands.

No license shall be issued to any bootblack, news stand, popcorn stand, weiner stand, or any other similar stand for the sale of any product where said stand proposes to locate on any street, alley or sidewalk of the City unless written permission be granted by the City Commission of the City of Opelika.

#### 9. Persons Engaged In Two or More Vocations.

All trades or vocations dealing in two or more of the articles or engaged in two or more of the trades or vocations for which licenses are required by the City, shall pay for and take out licenses for each line of business, calling or vocation.

#### 10. License Dependent on Capital or Income.

In all cases where the amount to be paid for the license depends upon the capital invested, or the value of the goods, or the amount of sales, receipts, or income the applicant for such license shall file with the City Clerk, as a condition precedent to the issue of such license, a sworn statement of such capital, sales receipt or income together with such other and further proof as the City Clerk shall request.

and the failure of the applicant to comply with this provision [fol. 32] shall subject such applicant to the penalties prescribed in Condition 4 (Penalties) hereinabove set out, of this license ordinance.

#### 11. False Affidavits.

It shall be unlawful for any applicant to knowingly and willfully make and file with the City Clerk any false written affidavit or false oral representation as to the amount of stock on hand or volume of gross receipts, revenue or businesses or capital invested therein or any other material information concerning the same as to any business or vocation for which license is required by the City, and a violation of this section shall subject the guilty person to the penalties provided in Condition 4 (Penalties) of this license ordinance.

#### 12. Vocations Not Specified Herein.

Any applicant desiring to conduct any business or vocation other than those specified in this license ordinance shall make application to the President of the Commission, who shall thereon fix a reasonable license for such business or vocation and instruct the Clerk as to the amount so fixed.

#### 13. Beginning Business After July 1.

Persons, firms, or corporations beginning any vocation or business for which licenses are required in this ordinance in the City or in its police jurisdiction after July 1, 1939, shall pay such license on or before the day such business or vocation is actually begun as a condition precedent to the right to do business or engage in such vocation.

#### 14. Delinquent License.

All licenses will become delinquent after the fifteenth day of February 1939, and an amount equal to 10% of the amount of such license will be added as a penalty, after said date; and all persons, firms, or corporations doing business after said date without proper license will be subject to arrest.

A

Abstract to Title Companies (Annual Only)	\$10.00
Architects (Annual Only)	15.00
Auctioneers (Annual Only)	25.00



## Automobiles

Dealers in automobiles alone	25.00
Repairs	
1. No help employed (one man shop)	15.00
2. Two or three employees	25.00
3. Four or more employees	35.00
4. Connection with dealers	15.00
Paint Shop	
1. Each person, firm, or corporation	25.00
2. Connection with other license	15.00
Top Repairing, Covering, Upholster	
1. Alone	25.00
2. Connection with other license	10.00
Vulcanizing or Retreading	15.00
Accessories	
1. Alone	25.00
2. In connection with other license	10.00
Second Hand Car Lot	
1. Alone	25.00
2. In connection with and as a dealer	Nothing
Storage	
1. Alone, principal business	10.00
2. In connection with other business for which automobile license is required	5.00
Automobile Composite License	50.00
Adding Machines, Cash Registers and Type-writers	
Dealers in (Annual Only)	10.00
[fol. 33] Advertising (Commercial) (Annual Only)	
1. Bill poster or distributor of advertising matter Per day	\$2.00
Per Year	25.00
2. Bill boards, each person or firm using, leasing or supplying billboards for advertising purposes	25.00
3. Sign Painters	5.00
4. Vehicle on streets or sidewalks as an instrument for advertising, same being subject to the approval of the City Commission, who reserve the right to revoke this license at any time that they deem proper with or without notice, and without refund of any license paid therefor	
One vehicle	25.00
Per week, one vehicle	10.00



## Agents (Annual Only)

Book Agents (Bibles excepted)	10.00
Labor agents	100.00
Musical Agents	25.00
Negotiating Loans on real estate	25.00
Claims or collection agencies	25.00
Transient or itinerant agents selling rugs, antiques, goods, wares, merchandise or taking orders for same	25.00
Transient agents for wearing apparel	10.00

## B

Barber Shops—One chair	5.00
Each additional chair whether in use or not	2.50
Barbers	
For each person not having shop but doing barber work	5.00
Beauty Parlors	10.00
Each operator additional or student	2.50
Bakeries	25.00
Itinerant or transient bakers, dealers, trades or distributors of bread	75.00
Bagatelle or Jenny Lind Table (Annual Only)	100.00
Bicycle exchange or repair shop (Annual Only)	5.00
Bottlers	25.00
Transient or itinerant dealers in soft drinks	25.00
Bootblack Stands	5.00
(Not required of barber shops)	
Bowling Alleys (Annual Only)	25.00
Building and Loan Associations (Annual Only)	25.00
Bus Stations—Passenger (Annual Only)	50.00
Bus or Truck Stations Operating In City	50.00
(Does not apply to Motor Vehicles operated by railroads and using railroad depots)	
Brokers or Commission Merchants (Annual Only)	15.00
Brick Yards (Annual Only)	25.00
Blacksmiths	5.00
Boarding or Rooming Houses, 10 or more boarders	10.00
Brokers Selling Fruits, Melons From Cars, per car (Annual Only)	5.00
Building Permits	1.00

### Bankrupt Sales (Annual Only)

Each person, firm or corporation selling bankrupt, fire or water damaged stock or merchandise where such stock or any or any part thereof has been shipped into City after such bankruptcy or damage in addition to other license required by law, per day 100.00

Where bankrupt or damages stock was located in City of such bankruptcy, or damage, in addition to other license required by law, per week 5.00

### C

Cabinet Makers (Annual Only) 10.00

Candy Makers (Annual Only) 10.00

[fol. 34] Candy—Transient or Itinerant Distributors of Candy, Confection, Peanuts or Peanut Products to Merchants or at Wholesale (Annual Only) \$25.00

Cattle—Dealers in (Annual Only) 15.00

Cigarettes

Retail Dealers 10.00

Wholesale Dealers 25.00

Vending Machines 4.00

Coal Dealers (Annual Only) 15.00

Commissaries or Grub Cars (Annual Only) 100.00

Contractors (building or construction) (Annual Only) 20.00

In brick, cement, or plastering 10.00

Subcontractors 10.00

Cotton Buyers (Annual Only) 50.00

Cotton Seed Oil Mills (Annual Only) 75.00

Cotton Gins (Annual Only) 30.00

Cotton Warehouses (Annual Only) 50.00

Cotton Seed Buyers (Annual Only) 25.00

Clothing or Shoes—Second hand dealers (Annual Only) 25.00

Cartridges, pistol or rifle (Annual Only) 15.00

(In addition to merchandise or other license)

### D

Dye House (Annual Only) 25.00

Detective Agencies (Annual Only) 25.00

Dealers in Produce Only (Annual Only)	20.00
Drays (Annual Only)	
One horse	5.00
Two horse	10.00
Druggists	See Mercantile
Dry Cleaners and Pressers (Annual Only)	15.00
Dance Halls—Public (Annual Only)	
Public dance hall where music is furnished by mechanical instruments such as radios, player-pianos, phonographs, or other like instruments either free or operated by coin in the slot	25.00
All other dance halls	50.00
(No license to be granted except upon written petition and investigation by Commission)	

### E

Engineers, Civil (Annual Only)	10.00
Express Offices (Annual Only)	125.00
Electrical Contractors and Dealers in Electrical Supplies (Annual Only)	25.00
Electrical contractors not dealers in such supplies	15.00
(No contractor do electrical work without first obtaining license and consent of City Light Department; all wires to be erected as prescribed by said department according to S. E. Underwriters Code.)	

### F

Fertilizer Manufacturer or Mixer (Annual Only)	50.00
Fertilizer Dealer—Alone or agent (Annual Only)	15.00
(Not included in merchants.)	
Florists or Nurseries (Annual Only)	25.00
Fortune Tellers or Gypsies (Annual Only)	100.00
Fruit Dealers or Peddlers From Wagons or Trucks	
Except farmers selling produce from own farms (Annual Only)	25.00
Fruit Stands	15.00
Fish—Dealers in fish or oysters alone (Annual Only)	15.00
Furniture Dealers	See Merchants

## G

Gas, Electric Light or Power Companies or Heat-  
[fol. 35] ing Companies Furnishing Power or  
Electricity Within City of Opelika (Annual Only)

Two Percentum of its gross income in munici-  
pality of Opelika, Alabama.

Gasoline—Dealers in Gasoline, Oils, or Gasoline  
Products and Their Agents, Wholesale (Annual  
Only)

\$100.00

Retail dealers in gasoline, oils, or gasoline  
products, each pump, whether in use or not

5.00

Retail or wholesale dealers in motor oil only

100.00

Golf Course, miniature (Annual Only)

15.00

Groceries

See Merchants

Grain, Feed and Seed Dealers (Annual Only)

25.00

(Or Merchandise License)

Gun Shops or Gun Repairs Shops (Annual Only)

5.00

## H

Hair Dressers (Colored) (Annual Only)

5.00

Hand Organs or Strolling Musical Bands (Annual  
Only)

5.00

Hardware

See Merchants

Hats, blocking, cleaning (holding no other license)  
(Annual Only)

15.00

Hatcheries (Annual Only)

10.00

Hides—Dealers in (Annual Only)

10.00

Hides—Dealers in connection with meat market or  
other business (Annual Only)

5.00

Hotels (Annual Only)

Less than 20 rooms

10.00

Over 20 and less than 30 rooms

25.00

Over 30 and less than 50 rooms

50.00

(This does not include the right to operate  
cafes, barber shops, newsstands, or sell ciga-  
rettes or other line of business without addi-  
tional license.)

House Movers (Annual Only)

10.00

## I

Ice Dealers—Retail (Annual Only)

75.00

Ice Cream Manufacturers, Ice Cream Products  
Plant Doing Wholesale or Retail Business at  
One Location and/or Distributors (Annual Only)

35.00

Each additional location

5.00

**Ice Cream Parlors (Annual Only)**

When ice cream is sold or distributed as the principal item of business ..... 35.00

**Ice Cream Peddlers (only wrapped goods) (Annual Only)** ..... 10.00

**Insurance (Annual Only)**

**Sec. 1.** For each person, firm or corporation doing a fire or marine insurance business in the City of Opelika, shall pay an annual license tax of \$4.00 on each \$100.00 or major fraction thereof of the gross premiums on policies issued for the preceding calendar year, or police jurisdiction thereof, less premiums returned by cancellation. Provided that each person, firm, or corporation doing a fire or marine insurance business which has not done business during preceding year in the City of Opelika, shall pay a license of \$500.00 in advance, and there shall be an adjustment at the expiration of a year on such license according to the schedule hereinabove specified;

**Sec. 2.** Each person, firm, or corporation doing any other kind of insurance business than those specified in Section 1, and mutual aid association shall pay an annual license tax of \$15.00 and \$1.00 on each \$100.00, or major fraction thereof of the gross premiums less premiums returned by cancellation received during the preceding year on policies issued during the preceding year in the City of Opelika, and police jurisdiction thereof;

**Sec. 3.** Persons, firms, or corporations doing what is known as a mutual business or paying sick, accident or death benefits within [fol. 36] the City of Opelika or police jurisdiction thereof, shall pay an annual license tax of \$15.00;

**Sec. 4.** Each person, firm or corporation doing an insurance business within the City of Opelika or police jurisdiction thereof shall, within sixty days after adoption of this license schedule and within sixty days after the first day of January in each succeeding



year, furnish to the Commission of the City of Opelika, in writing, a duly certified statement showing the full and true amount of gross premiums received during the preceding calendar year on policies issued to citizens of Opelika or police jurisdiction thereof; provided this license shall not apply to Knights of Pythias, Odd Fellows, and such other incorporated fraternal orders.

Implements, agricultural . . . . . See Merchants

## J

Junk—Dealers in Junk, scrap iron or scrap automobiles (Annual Only) . . . . . \$25.00  
Jewelers (Annual Only) . . . . . See Merchants

## L

Laundry (Annual Only) . . . . . 25.00  
Dry Cleaning in connection therewith . . . . . 10.00  
Itinerant Laundries . . . . . 75.00  
Itinerant Dry Cleaners . . . . . 50.00  
Lectures, where admission is charged, per day . . . . . 10.00  
Lightning Rod Salesman (Annual Only) . . . . . 100.00  
Liquor or Beverage (Annual Only)

(All liquor and beer licenses delinquent after January 2, 1939.)

Wholesale Malt or Brewed Beverage License . . . . . 200.00  
Hotel Liquor License . . . . . 150.00  
Restaurant Liquor Licenses . . . . . 150.00  
Club Liquor Licenses . . . . . 200.00  
Retailer of Malt or Brewed Beverages . . . . . 5.00

Lumber—Dealers in brick lime, cement, or other building material, not engaged in the manufacture of such building materials, or blinds, sash, etc. (Annual Only) . . . . . 10.00

## M

Manufacturers—Of cigars, cigarettes (Annual Only) . . . . . 25.00

Manufacturers—Of overalls (Annual Only) . . . . . 25.00

Merchants—Merchandise license does not include items of licenses, especially mentioned and otherwise licensed, special items are in addition to the general merchandise license.

Where stock is \$1000.00 or less . . . . . 5.00

Where stock is over \$1000.00 and less than \$2000.00	7.50
Where stock is over \$2000.00 and less than \$3000.00	10.00
Where stock is over \$3000.00 and less than \$5000.00	15.00
Where stock is over \$5000.00 and less than \$10,000.00	25.00
Where stock is over \$10,000.00	35.00

All persons taking out mercantile license shall be required to make affidavit before the City Clerk to the value of the stock carried by them, and before issuing such license the City Clerk is required to read the following questions to such applicant, who shall be required to answer same under oath:

1. Name of business or concern.
2. Name of person making application.
3. When was inventory last taken of stock on hand.
4. What was the total value of stock at the time of making said inventory.
5. Give the amount of State and County assessment of said stock for 1938.
6. Give total amount of fire insurance carried on Jan. 1, 1938 on such stock.
- [fol. 37] 7. Give value of said stock of goods now on hand.
8. Average stock carried.

Mattress Manufacturer or Renovator (Annual Only)	\$10.00
Merchant Tailor (Annual Only)	20.00
Machine Shop (Annual Only)	10.00
Music Machines (Annual Only)	
Where operated in connection with other business	2.50
Where not operated in connection with other business	10.00

Marble Yards (Annual Only)	10.00
Meat Markets (including fish and oysters) (Annual Only)	30.00
Mills	
Corn	10.00
Flour	10.00

## N

Newspapers—Daily, weekly, monthly, or periodical newspapers, or similar publications (Annual Only)	50.00
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## P

Professions—Attorneys at Law, Physicians, Dentists, Osteopaths, Optician, Occult, Chiropractor, or Any Other Profession, Not Here Enumerated and where doing business as a firm, for each individual member thereof (Annual Only)	15.00
Periodicals—Dealers or newsstands selling or distributing (Annual Only)	5.00
Paper Hangers and Decorators (Annual Only)	5.00
Pawn Brokers or agents (Annual Only)	150.00
Painters (contractors) (Annual Only)	5.00
Peddlers, or itinerant dealers, distributors or salesmen not otherwise included in this schedule (Annual Only)	75.00
Peanut or Popcorn Stands (Annual Only)	5.00
Photograph or Art Galleries (Annual Only)	
Where principal place of business has within the City of Opelika, for more than six months immediately prior thereto	10.00
Itinerant or transient photographer, picture or view taker, coupon salesman for pictures or photographers, enlargements, solicitors or canvassers for same	15.00
Piano Tuners (Annual Only)	10.00
Plumbers, Gas Fitters (Annual Only)	25.00
Printers, Job Printers (Annual Only)	
Two presses or less	10.00
Additional presses, per press	5.00
Pool Room (Six months only)	200.00
Punch Boards—each board (Annual Only)	1.00

## R

Railroads, having offices in or running freight or passenger cars to Opelika (Annual Only)	175.00
Rádios, Mechanical Refrigerators	
Dealers in, alone	25.00
In connection with other licensed business	10.00
Radio Repairs (Annual Only)	10.00
Real Estate Agents (Annual Only)	25.00
Restaurants	
Each restaurant, 5 tables or less	33.50
Each restaurant, 6 tables or more	50.00
(4 counter stools equal one table)	
Each lunch or hot dog stand, no stools or tables	15.00
Each tea room same schedule as Restaurants.	
Drug Stores serving regular meals, same schedule as restaurants.	
Peddlers of hot dogs, hamburgers or hot tamales	5.00

## S

Saw Mills (Annual Only)	25.00
[fol. 38] Stores Dealing in Second Hand Furniture or Other Second Hand Goods (Annual Only)	\$25.00
Sewing Machines—Dealers in (Annual Only)	15.00
(This does not apply to merchants now carrying same in stock and paying mercantile license otherwise.)	
Scales (Annual Only)	
Each automatic coil weighing scales for public use	1.00
Shoe Makers or Repairers (Annual Only)	10.00
Where no machinery	5.00
Shooting Galleries (Annual Only)	5.00
Spiritualists, or persons claiming to give special treatment for the cure of physical, mental or spiritual ailments, or Phrenologist (Annual Only)	100.00
Soft Drinks, retail where not in connection with other licensed business	5.00
Shows:	
Carnival or Street Fairs,	
For each place where said street fair is conducted, and for a duration not exceeding two weeks	
Not more than 10 Exhibitions	150.00

Where more than 10 Exhibitions ..... 200.00  
 (When operated under auspices of  
 local authorities in discretion of  
 Commission.)

Circus,

Each person operating circus, for each exhibition where seating capacity is:

Less than 2000, per day ..... 50.00

2000 or more, per day ..... 100.00

For each side show or exhibition accompanying such circus, per day ..... 10.00

Concerts,

Musical entertainments and/or public lecture, when charges are made for admission, not given wholly for charity, school or religious purposes, per day ..... 10.00

Dog or Pony Shows,

Where admission is charged shall be considered a circus and shall pay one-half licenses required for circus.

(Shall not apply to athletic or other School exhibitions.)

Menagerie, Museum,

For each menagerie, or museum where not in connection with circus ..... 250.00

Merry Go Round, Flying Jenny, Rollercoaster, or other device of like character (in each place where operated whether incorporated or not)

Per annum ..... 50.00

Per month ..... 20.00

Per day ..... 10.00

Motion picture Shows, per annum ..... 175.00

Motion picture Shows (transient) (Payable weekly in advance)

First week ..... 50.00

Each week thereafter ..... 25.00

Theatrical Shows, vaudeville, varsity shows, or exhibitions or performances to which admission is charged

Per day ..... 10.00

Per week ..... 25.00



# Soda Fountains or Confectionary Parlors (Annual Only)

Principal business	25.00
Soda fountains in drug stores or other businesses where licenses amount to \$25.00	Nothing
Sign Painting (Annual Only)	5.00
Skating Rinks, per week	10.00
Slot Machines, Automatic Vending Machines, or similar devices receiving coin in connection with sale or enjoyment of property or electric current, where otherwise legal, each machine (annual only)	25.00
(Not construed to license unlawful machines or devices.)	
Stables—Livery, or persons selling, feeding or keeping horses, mules, carriages, buggies, or other vehicles for hire, not to include drays or wagons hauling in competition with licensed drays or trucks (Annual Only)	25.00
[fol. 39] Stables—Itinerant or transient mule dealers, engaged in business of selling livestock at auction, or making sales otherwise (Annual Only)	\$200.00
Stables—Horse or mule dealers (Annual Only)	25.00
Suppers—Where charge is made and proceeds not exclusively devoted to charity or religious purposes (Annual Only)	1.00

## T

Tailors (Annual Only)	20.00
Itinerant or transient tailors or persons taking orders for suits or delivering same	75.00
Trucks, hauling or carrying or transporting freight baggage or packages (Annual Only)	See Taxicabs
Taxicabs—persons, firms or corporations operating motor vehicles, commonly known as taxicabs, shall pay the following licenses for each vehicles:	
Not exceeding over 2400 lbs. in weight	5.70
Weighing over 2500 lbs. but not exceeding 3000 lbs.	8.40
Weighing over 3000 lbs. but not exceeding 3500 lbs.	9.65
Weighing over 3500 lbs. but not exceeding 4000 lbs.	13.15
Weighing in excess of 4000 lbs.	15.00

No person or firm shall operate taxicabs or trucks in the City of Opelika or its police jurisdiction, carrying passengers for hire, unless each vehicle is protected by public liability insurance policy issued by a solvent insurance company carrying liability insurance within the following limits:

Person liability and bodily injury to one person \$5000.00 with a personal liability limit of \$10,000.00 or over; and \$5000.00 property damage in any one accident, except property of the assured. Not required that such coverage shall apply to assured's employee or employees engaged in operating such taxi at the time of the accident. Said policy shall include an endorsement that it shall not be cancelled without notice of cancellation served upon the City Clerk of Opelika at least five days prior to cancellation. No license shall be issued until such insurance policy is presented to the City Clerk before the issuance of such license.

Or, shall have an agreement in writing with the City of Opelika to pay all final Judgments recoverable against such applicant and/or driver of the taxicab arising out of their operation, and shall also deposit with the City of Opelika, where the application is for a permit to operate five or less taxicabs, \$2500.00, and the sum of \$500.00 for each additional taxicab over five which a permit is sought. Such deposit may be made by paying monthly the sum of \$25.00 for each taxicab for which permit is sought, the first payment to be made before the permit is granted and each succeeding payment made not later than the 5th of the following month, such monthly payments to be continued in such manner until the full amount of the required deposit is paid.

Taxicab Driver's License	2.00
Telegraph Companies (Annual Only)	50.00
Telephone Companies (Annual Only)	100.00

Tin Shops	15.00
Itinerant or transient tanners or roofers	25.00
Transient or Itinerant Dealers in Toilet Articles (Annual Only)	100.00
Transient or Itinerant Vendors or Patent Medicines or Doctors (Annual Only)	150.00
Transient or Itinerant Opticians (Annual Only)	75.00
Transient Agents or Dealers or Distributors or Books (Annual Only)	5.00
Transient Dealers	25.00
(Not covered heretofore in this schedule, defini- tion same as transient dealer.)	

## U

<b>Undertakers (Annual Only)</b>	<b>25.00</b>
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[fol. 40] v

<b>Veterinary Surgeons (Annual Only)</b> .....	<b>\$15.00</b>
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## W

<b>Watchmakers or Repairers. (Annual Only)</b>	<b>10.00</b>
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Transient or itinerant repairers of watches, stoves, or phonographs	15.00
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### Welders (Annual Only)

Alone	10.00
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Used in connection with machine shops . . . . . Nothing

Wood Yard	10.00
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There will be an issuance fee of \$0.50 added to and collected on each license.

Should any section, condition, or provision or any rate or amount scheduled as against any particular occupation exhibited in the foregoing schedule be held void or invalid, such invalidity shall not affect any other section, rate or provision of this license schedule.

Adopted and approved at a regular meeting of the City Commission of Opelika, Alabama, on December 13, 1938.

(Signed) Jno. S. Crossley, President of City Commission.

I, T. C. Tollison, City Clerk, certify that the foregoing ordinance is a true and correct copy of the original license schedule ordinance adopted by the City Commission of the

City of Opelika, Alabama, in open meeting at regular meeting thereof held on December 13, 1938.

Given under my hand, this 24 day of December, 1938.

(Signed) T. C. Tollison, City Clerk.

[fol. 41] • Testimony of O. B. Broadwater

Whereupon, O. B. BROADWATER, a witness sworn in behalf of the plaintiff City of Opelika, testified substantially as follows:

My name is O. B. Broadwater; I am a policeman of the City of Opelika and have been around 3 years; I was a City policeman in April of this year, and at that time arrested the defendant Rosco Jones on Eighth Street in front of Fisher's, this side of the picture show. At the time Rosco Jones had these booklets or pamphlets here exhibited to me or booklets or pamphlets similar to those; I mean they appeared to be the same as those.

Thereupon, counsel for defendant stated: "If he intends to introduce those as evidence we desire to object on the ground that he was arrested without a warrant and that any evidence that might have been delivered to the witness by the defendant would be incompetent."

The witness further testified substantially: I was there when the defendant was on the streets of Opelika with these books or pamphlets, and there is no question about it having been this defendant and books similar to these, two different types of books, one entitled "Face the facts and learn the only way to escape", and the other "Facism or freedom". The defendant was walking on the sidewalk, holding the books in his hand up that way, offering them for sale. I arrested him. He was holding the books up; he may have had some more books in the other hand. I heard the defendant make a statement about it in court later on; I did not at the time nor did any one in my presence as I know of make any threats against him or hold out any hope of reward to him or offer him any inducement to make a statement.

"Q. What did he say?"

"Mr. Powell: I would like to register a similar objection to any statement of that kind because the defendant was arrested without a warrant: the same objection."

"The Court: All right."

"A. He said that he made this stand here and fixed this thing and put it around there on 9th Street."

The stand indicated by witness, is an upright piece of timber, braced at the bottom to keep it erect and cross-[fol. 42] pieced or boxed at the top, 5 to 6 feet high.

The witness further testified substantially: I did not get this stand myself; Chief of Police Heath got it; I saw it though on Ninth Street; at that time it was as it is now and this is the way both sides were at that time; it had another one of these green books at the top; that is the condition it was in; it was on the streets of Opelika, just off the pavement. The wording on that sign was "Get your 2 copies, only 5 cents", the same as it is now on both sides. We brought the stand in and placed the defendant in jail. The books the defendant had in his hand at the time were similar to these shown to me here and the same as those up there on the stand.

Thereupon, the plaintiff City of Opelika offered in evidence the books and the stand identified by the witness.

On cross examination said witness O. B. Broadwater, testified substantially: I don't know as I told the defendant anything when I arrested him; I asked him if he had — license; he said he didn't have any license; I said "Well, you are violating a City ordinance. I will have to carry you down." I did not say anything else. I then carried him down, turned him over to the Chief and locked him up; I turned him over to the Chief at the jail; I put the defendant in jail myself; the Chief was there. What I have stated is all that I said to defendant; as to whether I told the defendant at all that he was under arrest, I supposed he had sense enough to know that. When the defendant made the statement about the sign we were up in the courtroom. As to how I know defendant made the statement freely and voluntarily, I didn't hear anybody threaten him anywhere; I don't remember how many policemen were standing around at the time; I was there; as well as I remember the Chief of Police was there; I am not sure he was; there were several around; I just don't recall just who were there. As to whether I am right sure anybody else was there than myself and the Chief; I said they were there; I am not positive just who was there but I remember that some others were there; if I am not mistaken Mr. Powell, counsel for defendant, was there, but I am not sure about —



"Q. What was the defendant's religion? Do you know what his religion is? A. No, sir. I don't know.

[fol. 43] "Mr. Duke: We object to what his religion is.

"The Court: I sustain the objection to the question. His religious belief is not involved.

"Mr. Powell: May it please the Court, we think that the question of religion is a very important part of the case, not only that he may be exempt from the provisions of the ordinance, the operation of the ordinance, on the ground of freedom of speech and press, but the same constitution makes exemption on the ground of freedom of religion.

"The Court: You can state to the reporter what you expect to prove. I do not see that the matter of religion is involved in the question of the violation of this ordinance. But, if you desire to offer evidence along that line state to the reporter what you desire to show by this witness if you can show it.

"Mr. Powell: We hope to show that this defendant was a regularly ordained minister of the Gospel, and that his activity at the time in question was in furtherance of his work as such minister, and that this is an effort to interfere with his right to worship and with that religious activity at that time.

"The Court: Well, I will sustain an objection to that testimony, I don't think—

"Mr. Powell: Note an exception.

"The Court: —it applies in this case.

"Mr. Powell: That is all."

On redirect examination said witness O. B. Broadwater testified substantially: I knew the defendant at the time referred to; I don't know personally where he lived, but he told me that he lived in Auburn; this happened in Opelika.

On recross examination said witness testified substantially: I have examined these booklets; I haven't taken them off of that stand; the board is in the same condition now that it was when taken; as to whether there was a booklet on the corner of the board you refer to, there might have been; I did not take it off; I wouldn't say whether there was one there or not; as to whether it is gone now, I don't know about that; it could not have been on there; it could have [fol. 44] been turned the other way. As to which of the two

books I have examined, I looked at both of them; I looked at them around at the stand where Thelma was (referring to wife of defendant) and also where the defendant was.

"Q. Did you notice this little thing here?

"Mr. Duke: We object. What is contained has no bearing whatever.

"A. No, ~~say~~ I didn't read it. I didn't read either one of them.

"The Court: It is not a question of the contents. It is not a question of whether it is a book or not, but whether this man was selling them in violation of the ordinance.

"Mr. Powell: If only freedom of the press was involved we would agree that would be the case. But if it involved another question of freedom of religion—

"The Court: I have not heard any testimony to the effect that this man was worshipping or exercising religious freedom there. That he just merely offered books for sale. If he was selling First Readers it would be the same thing.

"Mr. Powell: We will pass that for the present.

"The Court: The contents of the book are not in issue."

Queried by the Court the witness testified further substantially: As to whether I heard the defendant offer any of these books for sale, I saw him offer them for sale in his hand this way; the first place I saw him was coming up Avenue A; I didn't hear him say anything; I couldn't understand what he was saying; he was holding these books up there over the top of his head over the crowd; I went around the block and met him; he come up to the corner and crossed Avenue A and was going down Eighth Street, and he still had those books in his hand; he said, get 2 copies for 5 cents; as to whether he said "You can get 2 copies for 5 cents", I don't recall exactly the words; it was substantially that.

On recross examination being resumed, the witness testified substantially: As to how far I was from him there, I was about the middle of the street; I said the first time I saw him coming up Avenue A I wasn't noticing what he said. It is not the fact that I got that information about 2 copies from the sign; the fact is just what I told you; the [fol. 45] sign wasn't with the defendant at the time; the sign was on Ninth Street and I arrested the defendant on Eighth Street a block away; I saw the sign before I arrested

him. No, what the sign said is not all that I knew about it; I knew what I told you about it; I heard defendant offer those 2 copies for 5 cents; as to whether I first stated I did not hear defendant distinctly, I said I didn't understand him the first time I saw him. I am not wrong in what I testify now. As to whether I am wrong if the reporter has down my testimony that I did not understand just what defendant did say, the first time I saw the defendant on Avenue A I didn't arrest him then; when I first saw defendant I didn't understand just what he was saying; I did understand what he was saying the second time I saw him when I arrested him in front of Fisher's on Eighth Street.

"Mr. Powell: Just to refresh his recollection I would like to ask the reporter to refer back to the testimony in which he said that he didn't hear him, didn't know that he heard him say anything."

The testimony was then read as follows:

"The Court (To the witness): Did you hear this man offer any of those books for sale?

"A. I saw him offer them for sale in his hand this way, (Indicating). The first place I saw him coming up Avenue A.

"The Court: What did he say?

"A. I didn't hear him say anything. I couldn't understand what he was saying. He was holding those books up there over the top of his head over the crowd. I went around the block and met him. He come up the street and crossed Avenue A and was going down Eighth Street and he still had those books in his hand. He said, get two copies for 5 cents.

"The Court: He said, "You can get two copies for 5 cents"?"

"A. I don't recall exactly the words.

"The Court: Was it substantially that?

"A. Yes, sir."

Thereupon,

Mr. Powell: I would like to object to the statement that he offered them for sale as being merely a conclusion.

"Mr. Duke: I wish to call the Court's attention to the [fol. 46] fact that the witness said that he saw the man on Avenue A.

"The Court: I remember what he said, all of that.

"Mr. Powell: That is all."

On redirect examination said witness O. B. Broadwater testified substantially: I first saw the defendant on Avenue A, and at that time did not understand what he said; I saw the 2 books in his hand at that time; I then went around the block and met defendant going down Eighth Street; and at that time I heard what he said; I don't swear to exactly the words he said, but he had these pamphlets over his head and I understood him to say "2 copies for 5 cents"; that was after I went around the block; as I went around the block I left the Chief of Police on Ninth Street; the sign was on 9th Street; I met the defendant then on 8th Street. As to what connection defendant had with the sign, his wife was at the sign selling those pamphlets; offering them for sale, and I just heard the defendant make the statement in the City room later on that he had made that sign and placed it around there for her; I think at the time defendant made that statement the court was going on and that was the occasion in the City Recorder's Court; I am not positive whether Mr. John Crossley was there or not; I believe that Mr. Powell, counsel for defendant, was there; I am not positive about that; I just don't recall exactly who was there; there were several there.

On recross examination said witness testified substantially: It is not a fact that the statement he made was that he made the sign but didn't place it there; he said he placed it there, I don't remember that the words he used were that he made the sign but that he did not place it there; he didn't make that statement in my presence and your presence, but I understood him to say that he made the sign and placed it around there for her.

The plaintiff the City of Opelika here rested.

[fol. 47]

#### Testimony of Roscoe Jones

Whereupon, ROSCOE JONES, the defendant sworn in his own behalf, testified substantially: My full name is Roscoe Jones; I am a minister of the Gospel; I live now at 1101 Glade Road in Columbus, Ga. I moved to Columbus, Ga., in August. Prior to that I resided over here in what they call the planing mill field in Opelika, and then I resided

in Auburn. I lived here in this county from October until August; I came here the 1st day of October, 1938, and stayed until August, 1939. While here in this county I was engaged in preaching the Gospel of the Kingdom, and was engaged in no other kind of work.

"Q. Just explain to the Court how you worked in preaching the Gospel?

"Mr. Duke: We object to such a broad question as that.

"The Court: I sustain the objection to that question. I don't want to go into matters of common ethics here if I can help it. The question is not, as the Court sees it, a question of religion or the freedom of religion or the right to preach his religion; but purely a question of whether this man was selling books and offering them for sale on the streets of Opelika. I am going to try to hold the testimony to that issue.

"Mr. Powell: We would like to get in the record—

"The Court: Yes. You can state to the reporter what you expect him to say in answer to your question. That is our practice here in this State. It is possible you are not familiar with it as resident attorneys are. I don't know whether you have that practice in Georgia. I am not familiar with the practice over there. Here you ask a question and if the Court sustains the objection to it here you have the right for the benefit of your objection to state to the reporter what you expect the answer of the witness to be, to get it in the record.

"Mr. Powell: Well, I would like to ask him some questions regarding his work which I think would help to identify him to the Court and would help the Court to understand.

"The Court: He stated that he is a minister of the Gospel [fol. 48] and was at the time this occurred. That is proper for him to prove that and that is all right. The Court understands and has some idea as to his general character, repute and so on.

"Q. Do you conduct Bible studies?

"Mr. Duke: We object.

"The Court: I will let him answer that.

"A. Yes, sir, I do. Different places.

"Q. And then do you use any other means of bringing your Christian belief to the attention of others?

"A. Yes, sir. We use books and booklets and pamphlets and tracts, many different means.



"Q. Did you use any other methods?

"A. Yes, sir, phonograph records, etc.

"Q. What did the phonograph records contain?

"A. The subject of "Fact the Facts", -Fa-cism or Freedom", and religion and Christianity, etc.

"Q. Are they documents pertaining to the scriptures?

"A. Yes, sir.

"Q. Used for the purpose of promulgating Christian belief?

"A. Yes, sir, appealing to the people.

"The Court: I understand that you object to this?

"Mr. Duke: Yes, sir.

"The Court: Go ahead..

"Mr. Powell: If the Court sustains the objections I will be glad to state—

"The Court: I am going to exclude that upon the proper motion of the City of Opelika because I do not think it pertinent to the issue here. But I wish to be informed as to what you want to prove by the testimony so that I can rule with knowledge.

"Mr. Powell: We hope to show that this defendant is a regularly ordained minister of the Gospel, and that he is duly ordained and commissioned by the Lord and by the organization with which he is connected to carry on this work; and that his entire activity while he was engaged here in the City of Opelika was in the furtherance of his Christian belief and the promulgation of the doctrines and teachings of the Congregation of Jehovah's Witnesses with [fol: 49] which he is connected and that he was doing that at the time he was here in Opelika.

"The Court: Well, I don't know that it is necessary Mr. Powell. You know about your case here and you know the issue that is involved here. I don't think there is any question of religious liberty involved in this. You evidently do. I think it is purely a question of whether this defendant was violating a simple ordinance here that has been in effect for a long time. I do not think that this present defendant here has any more right to sell books on the streets than a person who is not a minister. I do not think that has anything to do with the question of guilt or innocence. I want you to have the right to state your case for the benefit of the record.

"Mr. Powell: I would like to further add to that the fact that this method of preaching the Gospel is one that is a

custom in the City and is practiced by others beside the defendant and that is well known to the authorities of City, and that only the defendant because of the fact that he belongs to this particular faith or belief is singled out and arrested and is subject to fine and imprisonment because of that fact. That was raised in my motion by stating that the application was arbitrarily made by the governing function of the City.

"Mr. Duke: After all of that I believe your Honor has gotten what he wants to prove. We want to make a motion to exclude the answers of the witness to all questions about his religion, etc., that he has answered in order to get it into the record.

"The Court: As evidence it is excluded. That being for the benefit of the record or for any use he desires to make of it hereafter, it is in the record for that purpose.

"Mr. Powell: We desire an exception.

"The Court: I do not think the mere fact that the defendant is a minister of the Gospel is a defense to this charge of selling books without first having obtained a license, from the city."

The defendant then testified further substantially: At the time that Mr. Broadwater arrested me he arrested me [fol. 50] in front of Mr. Hagedorn's. I never told any one that I placed that sign where I saw it; my wife carried that sign there; I didn't have anything to do with it; she went out to the City limits and brought it to town; I am stating what I imagine my wife did; I didn't see her do that. I didn't carry the sign, but they got her there with the sign they said. I went around Avenue A, whatever it is; I was on my way to the post office to get a post card to write my brother in Atlanta, and I heard some one say "Hey"; I didn't know who it was and I kept walking. I had a dozen of those books under my arm, in my hand, out in the open; I didn't have no bag; I heard some one say "Hey you". I looked around. It was a police officer in an automobile. I says "Are you talking to me?" He says, "Yes, I am talking to you. Come here. Get in this car." I said "Am I under arrest?" He said "Yes. You are under arrest." He went around then to the place where the other policeman got my wife and some one told him that the policeman had carried her to police headquarters, and he drove the car around to police headquarters, I hadn't made no attempt to offer any books for sale, but

I had this literature in my hand and it was taken from me at police headquarters by the Chief of Police. I didn't make any sale and Mr. Broadwater didn't hear me offer any one any 2 books for 5 cents. I didn't state in the court room in the presence of the officers and my counsel that I had placed that sign on 9th Street; the lawyer talked there to us and he asked me who made that sign and I told him I did. He asked me did I bring it to this town. I told him I didn't. He asked me where I lived and I told him Auburn. He said "Tell about that sign on the corner". I said, "I don't know. They got my wife. Get her." I wasn't present when they arrested my wife but I was told they arrested her. I just told him what was told to me. I was around in front of Hagedorn's here in the City of Opelika. Mr. Broadwater came down that way and somebody told him "The Chief has taken his wife and gone to the station". When I got there they had her and this sign in the police headquarters.

On cross-examination the defendant Roscoe Jones testified substantially: I made that sign myself and did that writing on it, "Get 2 copies. Only 5 cents"; I wrote that. [fol. 51] As to whether that sign was on the streets of Opelika that day, that's what you all say, I don't know that. I didn't just state that I had just left my wife over on Ninth Street with this sign and gone to the post office; I left the State Liquor Store. The last time I saw my wife before I was arrested I saw her at the State Liquor Store, and that is where I left from to go to the postoffice. She did not have that sign at that time. I didn't make that sign in Opelika, but in a place at the planing mill field at Emma Ragland's house. I didn't leave my wife at the State Liquor Store and go to the postoffice to get a card to write to my brother; that is not the way of it; she left me there and went to get the sign; while she was gone I was waiting for her to come and she stayed so long I left and went to the postoffice. I did the writing on the sign. I was walking up the street in Opelika with a dozen of these booklets under my arm; they were not in a satchel; they were open; I was not offering any of them for sale.

"Q. Did you on that day offer any for sale at any time?

"A. I didn't offer any for sale.

"Mr. Powell: You don't have to answer any question of that kind unless you desire, any question that will have a tendency to incriminate you.

"The Court: That is not the rule in Alabama, Mr. Powell. The defendant goes on the stand in Alabama and makes himself a witness and the opposing party has a right to cross-examine him and he is required to answer.

"Mr. Powell: How about incriminating questions? Does he have to answer them?

"The Court: Yes. He would like any other person who becomes a witness.

"Mr. Powell: I would like to note an exception."

The defendant testified further substantially: I did not on that day offer to sell anybody any of these books, two copies for 5 cents. As to whether at any time during the year 1939, since January 1, 1939, prior to the date of my arrest, I offered to sell books in the City of Opelika to any one in Opelika or distributed them in Opelika, I have worked out little routes around Opelika. As to whether I have ever distributed any of these books in the City of Opelika, I haven't heard any witness say I did; I did not, not as I [fol. 52] remember of. I have not as I remember sold any of them in the City of Opelika or the police jurisdiction thereof which extends 3 miles from the City limits of Opelika, which is 4 miles from this courthouse. I wouldn't swear that I haven't done that but I don't remember it; I will say it like this: I am the man and does the walking; I won't bring my wife into it; in other words, I had the rural part of the territory; my rural route is just as far as Lee County goes; I start outside the City limits where I have my work; I work the Columbus route; as to whether I know where the City limits are, I know where the sign says City limits; it is way down the road by some little colored houses on the left hand side of the road going toward Columbus; that point is approximately a mile from this building, perhaps a little further.

"Q. How far beyond that did you start to distributing this literature and selling it?

"A. Just where the first house is on the outside.

"Q. How about the West Point Road? You have gone that way?

"A. On every road leading out of town I started just outside the city limits and get to work.

"The Court: I think that testimony is incompetent. Mr. Powell, being unfamiliar with our rules of evidence, does not know it. He would have the right to object. I will object for him.

"Mr. Duke: Very well, your Honor.

"Mr. Powell: Thanks, your Honor."

On redirect examination the defendant testified substantially: I am not engaged in the book-selling business anywhere.

### Testimony of Stewart Melvin Baker

Whereupon, STEWART MELVIN BAKER, a witness sworn in behalf of defendant, testified substantially: My name is Stewart Melvin Baker; I am a minister of the Gospel, the Methodist denomination.

"Mr. Powell: May it please the Court, what we desire to prove is that they use literature too in connection with the promulgation of their faith in the City and that such is well known to the governing factor and yet there is probably nothing, no objection is made to it. To apply this ordinance [fol. 5?] then to the defendant would be discriminatory.

"The Court: You think then because the City fails in its duty to prosecute Dr. Baker there should be no insistence that it ought to prosecute your client?"

"Mr. Powell: If he was the only one that would not be true; but if that is followed as a rule and the exception is made then I think it would be.

"The Court: With respect to that, Mr. Powell, my thought would be that the prosecuting power should not do that in the State or City, that it should apply the law to all persons alike. That certainly is the theory of our law and our government, that only justice under the law should be administered to all people without regard to their race, color, previous condition of servitude, station in life, or anything at all of that kind. But the mere fact that the City of Opelika, if it be a fact, was not following that and that it failed to prosecute in some instances but was prosecuting in others, would not be a defense to any person for violating the law.

"Mr. Powell: Unless this discrimination was arbitrarily made that probably would be the case; but if it be shown that it is arbitrarily made—

"The Court: If a person was found guilty that might be a matter of appeal to the conscience of the Court with respect to the amount of punishment he would impose,



but it would not be a defense to the charge as a matter of law. Ask the questions and I will rule.

"Mr. Duke: Is it necessary for us to object?"

"The Court: I don't know what the question is going to be yet.

"Q. In your duties as a minister do you use any printed matter?"

"Mr. Duke: We object.

"The Court: Overruled. Let's see what it is."

The witness further testified substantially: We have Sunday school literature. My church is in the City of Opelika. As to whether any of such literature is given to the people of the City of Opelika or distributed to them in [fol. 54] any way, it is at the church. I visit the people in their homes; that is a part of my duties as a minister. As to whether at such times I talked to them about the doctrines and tenets of my faith, no, very little about doctrines; I never do that except in cases of trying to give comfort; that is not the purpose of my visits. I do invite them to church; I usually visit my own members; I don't visit others than the members of my church except by invitation. No, we do not take up collections at the church; we take offerings; as to whether it amounts to the collection of money, it is a voluntary offering; we pass around the usual offering plate; we take their offering if they want to give; if they don't want to there is no pressure; it is an act of worship. In the Sunday School there is a like voluntary offering and there literature is given; it is not sold. As to whether I have ever been arrested for that by the City of Opelika, as far as I know I have not violated the City ordinance; I have not seen any one else arrested for that.

On cross-examination said witness Stewart Melvin Baker testified substantially: I have never sold any church literature of the Methodist church in the City of Opelika. The literature that we use comes through our church; I have never sold it in the City of Opelika; it is paid for by contribution in the church and it is distributed free.

#### Testimony of Norman McCloud

Whereupon, NORMAN McCLOUD, a witness sworn in behalf of defendant, testified substantially: I am Pastor of

the First Methodist Church of Opelika. As to whether I understand what is the free exercise of religion, freedom of religion, under the Constitution, that is a pretty big question but I suppose that I understand it about like the average minister. My exercise of religion is carried on in harmony with the Constitutional provision guaranteeing the right to religious belief and practice. As to whether in the course of my work I use printed matter in any way to propagate my faith and belief, we have Christian Advocates, devotional literature and Sunday School quarterlies; I don't know whether we have lesson cards of various kinds [fol. 55] or not for the little children; we have Sunday School literature published I believe in cooperation with several other denominations. In the carrying on of our religious belief and worship we distribute that to the people; some of it is given to the people. As to whether collections are taken from the people to help carry on the general expenses of the church, collections are taken from the different classes in Sunday School; they make up a record every Sunday and they get that turned in as the offering given that day; as to whether we accept that from any one putting an offering into a collection, I don't draw any distinction; it is to pay the expenses incurred in the carrying on of the church work; it covers the free literature, something every month; it is paid for out of these offerings. I consider the literature an essential part of the Christian work, my work as a minister. That distribution of literature takes place in the church. I have no special license to distribute literature in the church. I have not been arrested for that in the City of Opelika nor have I seen any one else arrested for that.

"The Court: Mr. Powell, in order to shorten this matter: Don't you expect to prove by the rest of these gentlemen the same thing as by Dr. Baker and Dr. McCloud?

"Mr. Powell: Yes, sir, I have a number of other witnesses by whom I expect to prove the same thing.

"Mr. Duke: We will admit they will swear that.

"The Court: That is a matter of common knowledge.

"Mr. Lum Duke: We will admit that every preacher who is present will swear substantially the same thing.

"The Court: That he would swear that if he were put on the stand.

"Mr. Powell: I have a number of other witnesses, one, two, three, four, five.

"The Court: Just give their names to the reporter.

"Mr. Powell: A. C. Windham, W. H. Perry, M. C. Schrader, O. M. Mesick, Wilbur Walton, J. B. Seay, W. A. Hamilton, J. L. Griffin. We hope to prove by each of them substantially the same thing: That they distributed literature in and about their regular faith and practice, that that was common knowledge to the governing factors of the City, and no efforts, it is made with their approbation, no effort was made to arrest or confine them or imprison them in any way, that they have no license for such distribution, and that the only ones that have been arrested under this ordinance and charged with distributing religious literature of their faith and practice were the defendants.

"Mr. Duke: That is not the evidence. I would like to recall the officer to prove that.

"The Court: You move to exclude that?

"Mr. Duke: Yes, sir, all of it.

"The Court: The testimony is excluded that these ministers have given here. I don't think it applies as matter of defense. You have the benefit of that just the same as if all these gentlemen had testified.

"Mr. Powell: I suppose this would be excluded but want to get it in the record, that we propose to recall the City authorities and prove by them that no case has ever been made or ever offered to be made against any other class of religious belief except Jehovah's Witnesses.

"Mr. Duke: If he wants to call them as his witnesses. We object to calling them as our witnesses.

"Mr. Powell: It would be in rebuttal.

"The Court: Call your witness."

#### Testimony of Will Samford

Whereupon, WILL SAMFORD, a witness sworn in behalf of the defendant, testified substantially: I live in Opelika; I know the defendant and have known him about 12 months. I know the defendant's general reputation for truth and veracity and sobriety in the community ever since he has been in Opelika; his reputation is good.

"Q. Upon the basis of that would you believe him on oath?

[fol. 57] "Mr. Lum Duke: We object.

"The Court: Yes. His character has not been impeached.

"Mr. Powell: I would like to also prove by this witness that Roscoe Jones is a minister of the Gospel and is engaged in such work."

"The Court: That is without conflict.

"Mr. Lum Duke: We admit it.

"Mr. Powell: I would like to have it in the record.

"The Court: It is in there that they admit he is a minister of the Gospel.

"Mr. Duke: Of Jehovah's Witnesses.

"The Court: Yes.

"Mr. Powell: I have other witnesses, J. L. Battle, Albert Trimble and Fred Slaughter I would like to prove the same thing by.

"The Court: It is the rule in Alabama with respect to character for truth and veracity that testimony tending to show that they are of good reputation for truth is not admissible unless the adversary party has first attacked it. You cannot put a man on the stand and let him testify and then put somebody else on the stand and let them testify that believe him on his oath. That is not the rule in Alabama.

"Mr. Powell: I believe that would be all.

"The Court: All right.

"Mr. Powell: We would like to renew our motion to dismiss on the grounds stated in the written motion and on additional ground that no evidence has been offered to show the guilt of the defendant.

"The Court: Yes, you raise that, Mr. Powell, with the record by asking for it in writing, for what we call the affirmative charge: If the Court believes all the testimony in the case he would find the defendant not guilty, and the Court would mark that refused and let you have the benefit of it.

"Mr. Powell: I have a motion to that effect.

"The Court: File that and note that it was filed at the conclusion of the offering of the testimony.

"The Court: Have you anything in Rebuttal?

[fol. 58] "Mr. Duke: No, sir.

"The Court: I will overrule your motion, Mr. Powell.

"Mr. Powell: Yes, sir. We desire to except.

"The Court: Do you desire to argue?

"Mr. Powell: Not if the other side don't wish to argue.

"The Court: That does not preclude you from arguing.

"Mr. Powell: No, sir. We have argued quite a bit already and it would be only a repetition of things we have already stated.

"The Court: Yes, sir.

"Mr. Powell: I think the Court has clearly in mind the evidence and the law we have referred to, so I do not believe I will argue the case either.

The foregoing was substantially all the evidence in said cause and all the evidence tended to show and all the proceedings in said cause not of record.

The above and foregoing bill of exceptions was presented to me by the defendant Roscoe Jones on this 30th day of January, 1940, within the time required by law, as and for a legal bill of exceptions in said cause.

(Signed) W. O. Brownfield, Clerk Circuit Court of Lee County, Alabama.

[fol. 39] ORDER SETTLING BILL OF EXCEPTIONS.

The above and foregoing having been presented to the Clerk of the Circuit Court of Lee County, Alabama, by the defendant Roscoe Jones as and for a legal bill of exceptions in said cause on January 30, 1940, within the time required by law, the same is accordingly signed as and for a legal bill of exceptions in said cause by the Honorable W. B. Bowling, the Judge presiding at the trial of said cause, on this, the 29 day of February, 1940.

(Signed) W. B. Bowling, Presiding Judge.

IN CIRCUIT COURT OF LEE COUNTY

ORDER RE EXHIBITS—Filed March 18, 1940

To the Clerk of the Circuit Court of Lee County, Alabama:

You are hereby authorized and directed to certify to the Court of Appeals of Alabama, with the record on appeal



in this cause the following exhibits offered by plaintiff The City of Opelika and admitted in evidence on the trial:

1. A booklet entitled "Face the Facts", and
2. A booklet entitled "Facism or Freedom".

This, 29 day of February, 1940:

(Signed) W. B. Bowling, Presiding Judge.

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[fol. 60] Citation, in usual form, showing service on Tom Starling omitted in printing.

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[fol. 61] Clerk's Certificate to foregoing transcript omitted in printing.

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[fol. 62] IN COURT OF APPEALS OF ALABAMA

#### ASSIGNMENT OF ERRORS

##### First

The Court erred in overruling and denying defendant's motion to dismiss, which said motion reads as follows, to wit:

"The defendant moves to dismiss this case and for his discharge upon the following grounds:

"That the complaint is invalid and does not state facts sufficient to constitute an offense under the law;

"That the ordinance in question is invalid and void by reason that it is in direct conflict to the Constitutions of this State and of the United States, in this:

"That it restricts freedom of speech, freedom of press, and freedom of worship of Almighty God;

"That the ordinance in question is in direct violation of the Fourteenth Amendment of the Constitution of the United States.

"That the evidence by the prosecution shows defendant is not guilty."

"The defendant therefore prays this court to dismiss this case and that he be discharged."

The Court should have sustained the foregoing motion upon each and every ground thereof and for the reasons assigned therein and for the further reasons as follows, to wit: (R. P. 6)

A

Because the complaint is invalid and does not state facts sufficient to constitute an offense under the law as particularized as follows:

1. Paragraph one of said complaint the charge is made that, "he did sell books contrary to the license ordinance," (R. p. 3) "is invalid and therefore repugnant to the State and Federal Constitutions because it denies defendant free-[fol. 63] dom of speech, freedom of press, freedom of worship of Almighty God and is further invalid as to the defendant, who, as a minister of the Gospel, was engaged in such work at the time charged, and his offer to distribute the booklets "Face the Facts and Learn the Way to Escape", and "Fascism or Freedom" containing information and opinion was collateral to the main object of the defendant, which was to preach and teach the gospel.

2. Paragraph two of the complaint, which reads in part: "He did operate as a book agent . . . contrary to the license ordinance," (R. p. 3) is likewise invalid and repugnant to the State and Federal Constitutions and inapplicable to the defendant for the same reasons just above assigned because it denies him freedom of speech, freedom of press, and freedom of worship of Almighty God, as defendant is one of Jehovah's witnesses and was engaged in his regular work as a minister and the distribution of pamphlets of Jehovah's Witnesses was collateral to the main object of the defendant, which was to preach and teach the gospel.

3. That paragraph three of the complaint which says, "He did operate as a transient agent of books," (R. p. 3) is likewise invalid and repugnant to the "Due process of Law" clause of both the State and Federal Constitutions for the reasons assigned in paragraphs one and two and for the further reason that the same is discriminatory in that it puts different pains and penalties upon "transient" to that of a "resident" and therefore could not apply to the defendant, a minister of the gospel, one of Jehovah's witnesses, as distribution of the pamphlets in question was collateral to the

main object of the defendant which was to preach and teach the gospel and denies to him freedom of speech and freedom of press and freedom of worship of Jehovah God.

4. That paragraph four of the complaint is likewise invalid; it charges: "he did operate as a transient dealer of books" (R. p. 3) and is invalid and repugnant to the "Due Process" clause of both the State and Federal Constitutions because upon its face it is discriminatory in that different pains and penalties are put on "transients" to "residents" and therefore could not apply to the acts of the defendant because the defendant is a minister of the gospel and was [fol 64] acting in line of his duties as such at the time charged, distributing printed matter which was collateral to the main object of the defendant, which was to preach and teach the gospel of the Kingdom and would also deny him freedom of speech and freedom of the press and freedom of worship.

5. That paragraph five of the Complaint is for the same reason invalid; it says, "he did operate as a transient distributor of books . . . (R. p. 4) because it is discriminatory, putting different pains and penalties upon "transient" to "residents" and denies freedom of speech, freedom of the press and freedom of worship of Almighty God and is therefore repugnant to the "Due Process of Law" clause of the State and Federal Constitutions and would interfere with defendant's work as a minister of the gospel in distributing the same in printed form which distribution was collateral to the main object of the defendant which was to preach and teach the gospel of the Kingdom.

## B

That the ordinance known as "city license schedule for 1939" which provides: "Book agents, \$10 (R. p. 17); transient agents or dealers or distributors of periodicals or books, \$5 (R. p. 23); transient dealers (in periodicals or books) \$25" (R. p. 23) is invalid and void by reason of the fact that it is in direct conflict with the Constitution of this State and the United States, in this: that it restricts the freedom of speech, freedom of press, and freedom of worship of Almighty God, and is discriminatory; that the ordinance in question is in direct violation of the Fourteenth Amendment of the Constitution of the United States, therefore the court erred in not sustaining the motion to dismiss on this ground of the motion.

## C

The court erred in overruling that part of the motion to dismiss which says: "That the evidence by prosecution shows defendant is not guilty," (R. p. 6) as all the evidence shows that defendant was a minister and engaged in offering to distribute doctrines and tenets of his faith and for which he was arrested, contrary to and therefore repugnant [fol. 65] to the constitution of this State and the "Due Process" clause of the Fourteenth Amendment of the Constitution of the United States.

## Second

The court erred in ruling out testimony over objection of defendant, that defendant's activity at the time in question was in furtherance of his work as a minister of the gospel:

"The Court: You can state to reporter what you expect to prove. I do not see that the matter of religion is involved in the question of the violation of this ordinance. But if you desire to offer evidence along that line state to the reporter what you desire to show by this witness if you can show it.

"Mr. Powell: We hope to show that this defendant was a regularly ordained minister of the Gospel, and that his activity at the time in question was in furtherance of his work as such minister, and that this is an effort to interfere with his right to worship and with that religious activity at that time. (R. p. 27.)

"The Court: Well I will sustain an objection to that testimony, I don't think—

"Mr. Powell: Note an exception.

"The Court: It applies in this case (R. p. 27) as the same was material to his defense under the State and Federal Constitutions and thereby denying to him a fair and impartial trial, contrary to "Due-Process" clause of the State and Federal Constitutions.

## Third

The court erred in excluding expert testimony of Norman McCloud, Minister of Methodist Church, as follows:

"The Court: Mr. Powell, in order to shorten this matter: Don't you expect to prove by the rest of these gentlemen the same thing as by Dr. Baker and Dr. McCloud?

"Mr. Powell: Yes, sir. I have a number of other witnesses by whom I expect to prove the same thing.

[fol. 66] "Mr. Duke: We will admit they will swear that. (R. p. 39)

"The Court: Just give their names to the reporter.

"Mr. Powell: A. C. Windham, W. H. Perry, M. C. Schrader, O. M. Mesick, Wilbur Walton, J. B. Seay, W. A. Hamilton, J. L. Griffin. We hope to prove by each of them substantially the same thing: That they distributed literature in and about their regular faith and practise, that that was common knowledge to the governing factors of the City, and no efforts, it is made with their approbation, no effort was made to arrest or confine them or imprison them in any way, that they have no license for such distribution, and that the only ones that have been arrested under this ordinance and charged with distributing religious literature of their faith and practise were the defendants. (R. p. 39)

"The Court: The testimony is excluded that these ministers have given here. I don't think it applies as matter of defense. You have the benefit of that just the same as if all these gentlemen had testified." (R. p. 40)

showing that distribution of literature about their faith and practice is a proper part of the work of a minister as the same was material and vital to his defense, thus denying to defendant a fair and impartial trial and "Due Process of Law" under the above mentioned State and Federal Constitutions.

#### Four

- The charges against the defendant when he was put on trial in the Circuit Court were entirely different from the charges made against him in the Recorder's Court, and from which an appeal was taken to said Circuit Court, and which new charges were made known to him first when his case was called for trial in the Circuit Court. The original charge was for "Violation of city ordinance of Opelika (R. p. —). The said new charges embraced in the complaint (R. p. —) charged that, "he did sell books," "as a book agent", as "a transient agent", "as a transient



dealer", "as a transient distributor", thus denying defendant [fol. 67] ant "Due Process of Law" under said State and Federal Constitutions.

#### Fifth

The Court erred in denying defendant's demand for a trial by jury entered on appeal bond (R. p. 3) contrary to the "Due Process of Law" clause of said State and federal Constitutions.

#### Sixth

The Court erred in overruling defendant's motion for a new trial for all the reasons set forth and particularized therein (R. p. 10) when the same should have been sustained upon each and every ground set forth therein.

(Signed) Grover C. Powell, Attorney for Appellant.

There is no error in the record.

(Signed) Duke & Duke, Attorneys for Appellee.

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[fol. 68] IN COURT OF APPEALS OF ALABAMA

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—November 19, 1940

Come the parties by attorneys, and argue and submit this cause for decision.

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IN COURT OF APPEALS OF ALABAMA

JUDGMENT—March 18, 1941

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is manifest error. It is therefore considered that the judgment of the Circuit Court be reversed and annulled, and this Court proceeding to render the judgment that the Circuit Court should have rendered doth order and adjudge that a judgment be rendered for appellant. It is also considered that the Appellee pay the costs of appeal of this Court and of the Circuit Court.

## IN COURT OF APPEALS OF ALABAMA

5 Div. 109.

ROSCO JONES

v.

CITY OF OPELIKA

Appealed from Lee Circuit Court.

## OPINION

RICE, Judge:

Appellant, when arrested; was going about the streets of the City of Opelika, holding two little pamphlets in his [fol. 69] hand, and saying to the public: "Get your two copies for five cents."

Copies of the two pamphlets mentioned are before us, and we find in them nothing obscene or immoral; or which advocates unlawful conduct; or which is calculated to "disturb public order."

Here, as in the case styled *City of Cincinnati, Appellee v. Mosier, Appellant*, decided by the Court of Appeals for Hamilton County (Ohio), and reported in 61 Ohio Appellate Reports at page 81, the evidence developed that the "books" peddled were religious books, pamphlets or tracts (one was: *Face the Facts—and learn the only way of escape*; and the other: *"Fascism or Freedom"*), and "there is no evidence that such literature was in any way subversive of the morals of the public or inimical to our form of democratic government, or calculated to create a disturbance or breach of the peace of the country, or had the effect of interfering with the public welfare."

Appellant is an ordained minister of the gospel of Jehovah's Kingdom and (as he contends, without dispute in the testimony) one of Jehovah's witnesses, consecrated to bear witness concerning the Kingdom of Jehovah God. The sole mission of the pamphlets is to set forth the gospel of the Kingdom of God as he believes and preaches it.

He did not, he says, apply for or obtain a license (to "peddle" his pamphlets) because he regarded himself as sent by Jehovah God to do his work and believes that such application would have been an act of disobedience to Jehovah's Commandments which would result in his eternal destruction.

Appellant was tried in the Recorder's Court of the City of Opelika, and convicted, on the charge of selling or offering to sell books without a license being first obtained from the Clerk of said city as required by the city ordinance.

He appealed to the circuit court, where he was again convicted before the judge, sitting without a jury, and hence this appeal.

His defense was the unconstitutionality and invalidity of the ordinance (as applied to him), which requires a license to distribute printed matter. He says that it is in conflict with the Constitution of the State, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution in the following particulars, viz:

(a) It abridges and denies freedom of speech and freedom of the press. And (b) It abridges freedom of worship and freedom of conscience and religious liberty.

[fol. 70] The part of the ordinance of the City of Opelika that was applied to appellant is as follows:

"Be it ordained by the Board of Commissioners of the City of Opelika, Alabama, that the following schedule of rates for license or privilege taxes for conduct of any trade, vocation, profession or any other business conducted in the City of Opelika and its police jurisdiction for the year beginning January 1, 1939, and ending December 31, 1939, and the following conditions and provisions for the conduct thereof, and the following penalties for the violation thereof be and it is hereby adopted, to-wit:

*"All licenses, permits or other grants to carry on any business, trade, vocation or profession for which a charge is made by the City shall be subject to revocation in the discretion of the City Commission with or without notice to the licensee. No license shall be issued to any bootblack, news stand, pop corn stand, weiner stand, or other similar stand for the sale of any product where said stand proposes to locate on any street, alley or sidewalk of the City unless written permission be granted by the City Commission of the City of Opelika.*

*"Agents, book agents (Bibles excepted) \$10.00.*

*"Transient agents or dealers or distributors of books (annually only) \$5.00."* (Italics supplied by us.)

We are unable to distinguish the principle implicit (as applied to appellant) in the above quoted provisions of the

ordinance of the City of Opelika, from that involved in the ordinance of the City of Griffin, Georgia, dealt with by the Supreme Court of the United States in the case of *Lovell v. City of Griffin*, 303 U. S. 444. There seems to us nothing more objectionable, legally, in requiring all who would distribute circulars, hand books, advertising, or literature of any kind, whether said articles are being delivered free, or whether same are being sold, to first obtain written permission from the City Manager of the City of Griffin (as in *Lovell v. City of Griffin* case, *supra*), than there is, here, in, while pretending to provide a general license ordinance, providing, as a matter of fact, that the license is held at the sole, unbridled and complete, discretion of the City Commission of the City of Opelika.

And so, following the reasoning of the Supreme Court of the United States in the *Lovell v. City of Griffin* case, *supra*, [fol. 71] we may say, here, that the ordinance of the City of Opelika in question, as applied to appellant, "is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. . . . Legislation (and it is well settled that municipal ordinances adopted under State authority constitute State action and are within the prohibition of the First Amendment to the Constitution of the United States which is made applicable to the States by the provisions of the Fourteenth Amendment to the Constitution of the United States) of the type of the ordinance in question would restore the system of license and censorship in its baldest form."

Of course, "freedom of speech and freedom of the press; which are protected by the First Amendment from infringement by Congress, are among the fundamental personal rights and liberties which are protected by the Fourteenth Amendment from invasion by State action."

We cannot say here—as the Supreme Court of the United States said in the *Lovell v. City of Griffin* case, *supra*—that the ordinance in question is "invalid on its face"—this for the reason that same purports to be but a simple license ordinance, such as is adopted by most cities.

But, as applied to appellant the ordinance, for reasons we hope we have made clear hereinabove, is invalid—void, and of no effect.

It—when undertaken to be so applied—as was said by the Court of Appeals for Hamilton County (Ohio) in the

case of Cincinnati, Appellee v. Mosier, Appellant, supra: "can have no more application than it would if it were attempted to apply it to an act performed outside the State, County, or City."

The judgment of conviction rendered by the Circuit Court is reversed.

And a judgment here, and hereby, rendered discharging appellant from further custody in these proceedings.

Reversed and Rendered.

# IN COURT OF APPEALS OF ALABAMA

## APPLICATION FOR REHEARING—March 31, 1941

Comes the Appellee, City of Opelika, by its Attorneys of Record, Duke & Duke, and applies to the Court for a [fol. 72] Rehearing on the judgment rendered by this Court in this cause on March 18, 1941, and prays for an order of the Court or a justice thereof, that the pendency of this application for rehearing shall stay or suspend the execution of the judgment of the Court, and as grounds for said Rehearing assigns the following:

1. The Court of Appeals erred in holding that Section 1 under Conditions and Provisions of the City License Schedule for 1939, as applied to appellant, is invalid—void, and of no effect.

2. The Court of Appeals erred in holding that the entire City License Schedule for 1939, as applied to Appellant, was invalid—void, and of no effect, merely because Section 1 under Conditions and Provisions of the City License Schedule for 1939 was in conflict with the Fourteenth Amendment of the United States.

Wherefore, Appellee prays that said Rehearing may be granted.

Respectfully submitted, (Signed) Duke & Duke, Attorneys for Appellee.

I hereby certify that a copy of this Motion was delivered to Hon. Grover C. Powell, Attorney of record for Appellant on the 26th day of March, 1941.

(Signed) Wm. S. Duke, Attorney for Appellee.



## IN COURT OF APPEALS OF ALABAMA

ORDER OVERRULING APPLICATION FOR REHEARING—April 22,  
1941

It is ordered that the application for rehearing be and the same is overruled.

Per Curiam.

[fol. 73] Clerks' certificates to foregoing transcript omitted in printing.

[fol. 74] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 13, 1941

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(7920)